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POLITICAL ESSAYS.

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BY

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POLITICAL ESSAYS.

PARLIAMENTARY REFORM.

THAT the people of this country are not duly represented in Parliament appears to be admitted, though with much diversity of meaning, by every party in the State. But in view of the changes which will probably be made in the constitution of the representative body, it is above all things desirable that the real nature of its defects, and their relation to each other, should be distinctly understood, and the ground cleared for legislative action by removing from it the formidable impediments which are due to confusion of thought. For it is certain, notwithstanding perpetual assertions to the contrary, that the national representation is no exception to the general rule which prescribes clearness of apprehension and closeness of reasoning, comprehensive inquiry and systematic treatment, as conditions of success in the solution of social problems; and that, if this question is abandoned to the care of those who deprecate as "mere theory" all attempt at scientific investigation, and consider that there is nothing in common between statesmanship and thought, that which has already followed from such a

course will follow from it again,—piecemeal legislation, confusion worse confounded, and complete if not immediate failure.

The charge against the House of Commons which is chiefly and almost exclusively insisted upon is, that the great majority of the nation has no part actual or nominal in its election. But this is not the only important imputation to which it is liable, nor the first in point of logical order, nor that against which it is most difficult to defend. The first and most serious defect in the House of Commons is that it does not represent even those whom it professes to represent —the enfranchised portion of the community. It is obvious that the ordinary meaning of the terms "representation" and "representative government" is different from their literal meaning. Speaking literally, any nation the ruler or rulers of which are chosen by a considerable number of the citizens may be said to possess representative government. But this is not the ordinary meaning of the term. Representative government, in the sense in which it is commonly understood, and in which only it can claim the superiority usually ascribed to it over other political systems,—representation, considered as an instrument of political liberty,—implies political equality. No member of a community can be said to be "represented" in the technical and usual acceptation of the term, or to possess that liberty which such representation confers, who has not an equal share with each of the rest in the choice of its rulers. That such equality should exist may, or may not, be desirable;

but no one who is without it is "represented," or politically free. Political liberty (or more strictly speaking that measure of it which is conferred by representation) is the result of political power; of such a power in the individual as affords security that measures affecting his interests will not be adopted without either his own consent, or the consent of a majority of the whole electoral community. But in order that he may have this power, it is not sufficient that he should be entitled to a share in the election of the governing body. His share in it must be such as cannot be set aside by the superior share possessed by another person. As long as each elector has an equal part with each of the rest in the choice of the representative assembly, no political action can be taken by it without his consent (as expressed by his representative) or the consent of a majority of the electors. But it is otherwise if he has an inferior part in it. In that case the representative assembly may legislate, not only against the will of the elector, but against that of the majority of those who possess the franchise. He is therefore without that political power of which representation is the instrument and political liberty the result; he is not, properly speaking, "represented" at all. The most that he can be said to possess is an approach to the privilege varying with the degree of the inequality. It cannot be too often or too emphatically repeated, that without political equality there is no real political liberty. It may, or may not, be expedient with a view to the general welfare, which is the only true test of expediency, that a majority of

the citizens should be excluded from political power, or that of those who have it some should have a larger share of it than others; but it must never for a moment be forgotten that to those who are thus placed at a disadvantage is denied the privilege of "representation," and of that political freedom which representation is intended to confer.

Tried, then, by this test, it is evident that the representation which has been accorded to a limited number of persons in this country is far indeed from being of that kind to which the name is generally applied,—of that kind which is essential to "free institutions." Among those to whom the subject is familiar its inequalities are sufficiently notorious; but for the benefit of that numerous class to whom they are known only as "anomalies and irregularities" of no great importance and which it would be a pity to disturb for the sake of a theoretic symmetry, it is well that attention should from time to time be drawn to them. A majority, then, of the House of Commons, consisting of 328 members, all of whom (except 11) represent borough constituencies of the smaller class in England (including Wales) and Scotland, is returned by 250,291 electors, or about one-fifth of the whole electoral body; while about the same number of electors (244,459) in the larger boroughs return only 36 members, or about one-eighteenth of the whole House. The last-mentioned number of electors have therefore each on the average little more than one-fourth of the political power which they would possess if the distribution were equal, and only one-ninth of

that which is possessed by the former. Thus, too, the voters in the smaller English and Scotch boroughs, besides overwhelming beyond all possibility of competition the same number of voters in the larger, can (if they please) with the assistance of only 11 constituencies from the rest of the country (making altogether only about one-fifth of the electoral body), completely control the whole legislation and policy of the country. Again, of these smaller boroughs no less than 113 members (or more than one-sixth of the House) are returned by 82, containing only 49,000 electors, or about one twenty-fourth of the whole electoral community. Each of the 49,000 electors, therefore, has no less than four times his proportionate share of political power. But, further, of these 49,000 voters 11,000, or $\frac{1}{4\frac{1}{2}}$th of the whole number in the country (being those of 30 of the smallest boroughs) return no less than 58 members, or about one-eleventh of the whole House. On the other hand (to take, out of many instances of contrast, one or two of the most striking), a constituency containing about the same number of voters (11,330), being no other than the important city of Birmingham, returns only two members. An elector, therefore, in any of these 30 boroughs has more than twenty-nine times as much political power as an elector of Birmingham; who, moreover, has only about one-third of the share which he would have in the representation if the division were equal. As compared with the not less important constituency of Manchester, the case of these 30 boroughs is still worse. That constituency numbers 20,458 voters, and returns only two members to Par-

liament; so that a voter in any one of the 30 boroughs has about *fifty-three* times the political power of an elector for Manchester, who has only about one-fifth of his proportionate share. Again, 467,000 voters, being those of the borough constituencies in England and Wales, return 338 members, or more than half the House of Commons; while a somewhat larger number of voters (519,000) being those for the counties of England and Wales, return only 160 members. An elector, therefore, of an English or Welsh borough has more than twice the amount of political power possessed by an elector for an English or Welsh county. Lancashire, with 37,000 electors, returns five members; Durham, with 1,800, returns two. Yorkshire, with 40,345 electors, returns only two members; while about the same number (41,426) in eleven other counties return *twenty-three*: so that the political power of an elector in any of these eleven counties is nearly *twelve times* that of an elector for Yorkshire. Other very decided though less startling inequalities pervade the whole list of county and borough constituencies throughout the United Kingdom.

Those who assert that this distribution of political privilege is the result of deliberation and intention assert that which (to say the least) is not very creditable to its supposed authors, however disinterested may have been their motives. For the only intention of any kind of which it can by any possibility be said to bear evidence is an intention to deceive; an intention to impose upon the country an oligarchy under the disguise of a representative government with a

high electoral qualification. But, in truth, no such account can reasonably be given of it. So far from being the result of design, it is the result of the failure of design for want of due regard to the future. Short views of national life, and political action looking only to the present, are its real causes. The original idea of the House of Commons—an idea which gained force and distinctness with the advance of civilization—was that of an assembly really representing the nation; and, on the whole, it may be said that in the early periods of its existence this idea was roughly and approximately realized. And it might probably have been so to this day, but that the royal power of designating constituencies and the number of their members fell into disuse; and, no substitute having been provided for it, the mechanism of representative government was brought to a full stop. Among places which, when first enfranchised, were about equal or not very greatly different in point of numerical importance, some (as was to be expected) increased and others fell off in population, while others became almost entirely depopulated. The intention was that the nation should be represented; the fact came to be that what used to be the nation was represented. Thus while the capacity for political freedom increased, political freedom itself diminished; and the evil advanced with rapid strides until it received in the Reform Act a check which from the nature of the case could only be temporary, and the inadequacy of which as a remedy is seen in the figures above cited. To maintain, then, the present apportionment of represen-

tatives to electors is not conservatism, but retrogression. It is an attempt, not to oppose the further advance of self-government, but to drive it from ground which it has already won. And the contending parties would more properly be termed, not the progressive and the stationary, but the conservative and the retrograde.

The only defence requiring consideration which has ever been set up for the maintenance of this singular arrangement is to the following effect:—That on the whole it "works well;" that with an assembly so elected the three branches of the Legislature have acted harmoniously together; that good laws have been made and well administered, and the affairs of the nation prosperously and satisfactorily conducted; that the very "anomalies and irregularities" which the system involves are important and even essential to the safe, effectual, and beneficial operation of parliamentary government as established in this country; and that to make any material change in constitutional arrangements which have proved in practice so successful would be dangerous and unwise. Expressed in a more logical form the argument is, that whatever may be the imperfection of the present system as a means of conferring representation and consequent political liberty upon those who possess the franchise, it fulfils the object of representation and of political liberty, which is "good government," better than an arrangement nearer in that respect to perfection could fulfil it; or at least that there is no such probability to the contrary as renders it expedient to incur the risk of change.

The answer to this argument is easy. It is not even necessary to inquire into the truth of the premises upon which it proceeds;—whether there is really any probability that the change would in a material degree derange the machinery of parliamentary government, or place the affairs of the nation in hands whose administration of them would be such that the nation would be a loser by the transfer; whether, for instance, any real injury to the tone and character of the representative assembly might be expected to result from an increase in the number of members for large constituencies which cannot be bribed as compared with that of members for small constituencies which can; or what is the precise importance of the supposed diminution of stability which Cabinets would undergo on account of the substitution of independent for dependent electoral communities. The case for revision and readjustment is complete, irrespectively of the answer to be given to these questions. Representative institutions, as distinct from other political systems, have two objects in view, one of which is the prevention of misgovernment (it being both probable from the nature of the case and proved by experience that government will be better in which the governed have some voice than in which they have none); but the other and by far the most important object is the prevention of government, whether good or bad, without the consent of the governed. Political subjection—the submission of the individual to one or more political rulers in whose choice he has no share, or only a share which can be nullified by the superior share of

another person—is an evil the same in kind, though never, in modern times and among civilized nations the same in degree, as personal subjection, or slavery;* and it is obviously no answer to the slave to tell him that he is better off than the free man. The subject may by possibility be "better governed" (in the ordinary sense of the term) under despotism than under free institutions, just as the slave may by possibility be "better off" (in the ordinary sense of the term) than the free man. But slavery is not therefore better than freedom, nor despotism than liberty. There is a conceivable degree of comparative misgovernment, as there is a conceivable degree of comparative personal suffering, which, if it could be shown to be attendant on political or on personal freedom respectively, would justify the substitution for it of political subjection or of slavery. For, as we have seen, one

* Earl Grey, in his able and interesting Essay on Parliamentary Government and Reform, states, without hesitation, that "the possession of political power is valuable to the people, not for its own sake, but as the means of ensuring good government." It follows that the absence of political power, and therefore of political liberty, is an evil, not in itself, but as the cause of misgovernment. But it is not to be supposed that, on the one hand, Earl Grey considers that slavery is no evil in itself, or that, on the other, he considers that there is any distinction in *kind* between subjection to one or more self-chosen political rulers, which is despotism or oligarchy, and subjection to a self-chosen proprietor, which is slavery. And if there is no distinction in kind between them, and if one is an evil, so must be the other. It is possible that Earl Grey may believe that the absence of political liberty, though in itself an evil, is in itself an evil in degree so small as to be inappreciable. But no one who reflects upon the immense power which governments exercise, not only in theory but in practice, over the governed will be inclined to endorse such an opinion.

of the objects, though by far the least important, of representative institutions is good government, just as one of the objects of laws against slavery is to prevent the ill-treatment of the slave; and if it can be shown in any case that this object will be better attained by other institutions, those institutions are, *pro tanto*, to be preferred. But, as in case of laws against slavery, so in that of representative institutions, the superiority in point of importance of that other object —the possession by the individual of a voice in the regulation of his own affairs—is such that the degree of comparative misgovernment which those institutions would involve must be extremely great to be conclusive as an argument against them. It is true that this consideration is of more force with respect to personal than to political subjection, because the denial to the individual of any voice in the management of his own affairs is in practice more direct and complete in the former than in the latter, and therefore the superiority in point of importance of the object which consists in preventing that denial as an evil in itself is greater when the question is one of personal than when it is one of political subjection. But even when the question is of political subjection, the superiority is great and the argument valid. The value of institutions which secure the individual against an assumption on the part of persons unauthorised by himself to make laws affecting his person and property, and which preserve for him the vast benefits, moral and intellectual, of self-dependence, is such that even a very important gain as regards the mode in which the

nation was governed might well be insufficient to compensate for their loss.

It is therefore of no avail, as against any proposal for an extension or development of the representative principle, to contend that good government is sufficiently provided for at present, and that there is no saying but that government might be worse if that principle received a further application. Before present good government can be admitted as a conclusive reason against such a proposal, it must be shown, not that the government which would follow upon its adoption would be no better and might be worse, but that it would be signally and ruinously worse; that a degree of suffering on the part of the majority of the community would ensue which would overbalance the immense intrinsic advantages of self-government. But this certainly cannot be shown to be the case so far as regards the class which is now nominally represented. To say that the gift of real representation to this class would be attended with such a degree of misgovernment as would not be compensated by its advantages is to say that one million and a quarter out of seven millions of Englishmen cannot safely be entrusted with political liberty. Nor is it probable that the assertion would be made by any thoughtful politician, but for another defect (to be presently noticed) in the constitution of the House of Commons as intended to represent existing voters, and which is a real, though certainly not an insuperable, objection to the more equal distribution of electoral power. For this if for no other reason a simple correction of the evil now under consideration

would not satisfactorily meet the necessities of the case. Moreover, a mere temporary redress of the balance, such as might be afforded by transferring seats and by "grouping" or disfranchising boroughs, would be only an imitation of that wisdom of our ancestors of which we now see the result. What is to be desired is an arrangement which by some self-acting process will be capable of adaptation to the constantly-changing numerical relations of local divisions; under which it will be no longer possible that a constituency which now returns an equal number of members with another constituency of equal dimensions will continue to do so when outnumbering it tenfold, and that the nation should consequently be liable about once in every ten years to violent constitutional changes; and which will not, while correcting one evil, fail to correct another of which it may have counterbalanced and neutralised the mischievous operation. It is, therefore, eminently desirable that in any proposed measure of reform the subject should be viewed as a whole. Enough of mischief has already been done by isolated attacks upon the constitution—by independent and disjointed legislation. It is advisable once for all to inquire whether some comprehensive and satisfactory system of national representation cannot be discovered, instead of endeavouring from time to time to patch up, when they become too flagrant to be any longer tolerated, the grievances which are caused by the absence of all system whatever. A scheme of this kind—the result of the highest ability applied to a careful and impartial study of the subject

—has been proposed by Mr. Hare, and has had the singular fortune of being unanimously approved both by philosophers and statesmen, and unanimously treated as impracticable by the latter on account of its novelty and supposed complication; as if nothing which is novel, however excellent, had any chance of being adopted in this country, and as if any amount of complexity the result of regulation were not preferable to the existing inconsistency, confusion, and injury to the best interests of the nation resulting from the total absence of it. The fact, however, is that the complication, so far as the voter is concerned, has absolutely no existence, the duty devolving upon him being merely that of writing down upon a voting paper the names of as many of the candidates who appear on the general published list as he pleases; while, as regards the returning officers and the registrar-general, the complication is certainly not such as to render their duties either unintelligible or difficult of performance to any person qualified in other respects to discharge them.

The ground-work of Mr. Hare's scheme is the provision that any candidate who could obtain the votes of a number of electors (wheresoever resident) which, supposing that there were as many constituencies as members and that the constituencies were numerically equal, would be the number of electors in each constituency, should be entitled to be returned. It is obvious that in this manner the evil which is here in question —the unequal apportionment of representatives to electors—would cease, not only for the present but

beyond the possibility of recurrence. At the same time (as will presently be seen) the other great defect, which is next in due order of consideration, in the electoral apparatus of this country would be completely removed; while a reality and vitality would be imparted to the representation of which it is impossible to overestimate the advantages. Nor would the local character of the elections be abandoned. The votes would be taken, as now, locally. The candidate would be a candidate for some specified constituency; and the electors, if sufficiently numerous to make up the required number of votes, would have the power they now possess of returning a member interested in the locality in which they reside. It is only by a scheme such as this, or at least by some measure which shall at once lay the foundation and prepare men's minds for the completion by easy and natural transitions of such a scheme, that any satisfactory improvement can be effected in the political condition of this country.

The failure of the House of Commons in the manner which has just been considered to represent even those who are legally qualified to vote is peculiar to itself. Its failure in another respect to represent them is shared by other existing representative assemblies. Like all legislative bodies which are elected by the system of local majorities, the House of Commons does not represent the electors, but only that portion of them which consists of the aggregate majorities. It is contended, indeed, that the electors whose candidate is defeated, or who do not vote because they

know that they are in a minority, have no reason to complain, because their opinions are represented by the members for other constituencies in which those opinions prevail. But, in the first place, supposing this to be the case, they are not represented by members whom they themselves, but whom other persons, have chosen. In the next, the statement is only so far true as that, in the existing division of the nation into two great political parties, an elector who wishes to return a particular candidate and is unable to do so in his own electorate, may console himself with the reflection that some person belonging to the same party as that candidate has been returned in another. But there are, or may be, in every constituency electors who, if they had the power, would elect their representative on a totally different ground than that he belonged to the Conservative or to the Liberal party,—as, for instance, because he was an advocate of peace, or of economy, or for reasons entirely independent of his political opinions, and simply because he was a person in whom they could confide, and whose political guidance they would be content to follow. To these electors it is obvious that the argument is wholly inapplicable. It applies only, so far as it has any force at all, to those whose preference of a candidate is grounded on his adhesion to one of the two principal parties which happen for the time to be struggling for ascendancy. And even to these it would not apply in the event of any considerable reduction of the franchise. The majority in every constituency would in that event consist of manual labourers, whose

opinions would therefore prevail, if the present mode of election were to remain unchanged, to the almost total exclusion of the better educated minority.

If, indeed, it had been made for the express purpose of providing that democracy in this country should be entirely "unbalanced," no arrangement could possibly have been better contrived. Under the present restricted suffrage and inequality of representation its injurious operation in this respect is comparatively little felt; and it is this consideration which has been before referred to as constituting a real objection, so far as it goes, to any measure for the removal of that inequality, and as rendering it desirable that such a measure (of which, however, the advantages would in any case greatly exceed the disadvantages) should include a remedy for the evil now under consideration. But, whenever any large increase shall have taken place in the number of those entitled to the franchise, the mischief will be of a far more serious kind. A suffrage either universal or widely-extended is a very different thing under an electoral system which permits the class best qualified for the exercise of political functions to return members whose number is proportionate to its own numerical importance, and under one which permits it to return no members at all. It is not too much to say, that unless this flaw in the electoral machine is first corrected any proposal for a very large reduction of the franchise will be far less easy to defend. There can be no doubt that the fact which more than any other has brought discredit upon free government as established in the United

States, and made that great experiment a partial and questionable instead of a triumphant and universally acknowledged success—the absence of the first intellects in the country from the helm of public affairs—is due to that misapprehension on the part of its founders which prevented them from perceiving that perfect liberty was to be attained, not by the method of local majorities, but by that of personal representation. It is hard upon democracy that the examples of it with which men are familiar should be mere counterfeits, failing, in a manner so injurious to its reputation, to satisfy political needs.

In order that each elector may receive the full benefit of the representation to which he is nominally entitled, it is necessary that he should have a share, equal to that of any other, in the election of the representative assembly, in such a sense as that some member of it should owe his return to the vote of that elector. If there is no member of the assembly for whom the elector has voted, he is not, strictly speaking, represented in it. Hitherto it appears to have been thought that this the true ideal of representation was not in practice attainable; and that the only feasible mode of applying the principle was to divide the electoral community into sections, or to take existing local divisions, and assign to each its due number of representatives. Thus, supposing (for the sake of simplicity) the electoral body to consist of 500 persons, and the representative assembly of 10—according to the ideas hitherto prevalent the nearest approach to a just arrangement would be to divide the whole

number of electors into sections of 50, each returning one member. In this manner it is evident that perfect representation is very far from being attained; for where (as will usually be the case) there is more than one candidate for each section, the choice of the section is the choice of the majority in it; and the minority, however considerable, have no part in the election of any member of the assembly. It was not generally perceived that by an arrangement perfectly simple in principle but involving some complication of detail, providing that every candidate should be returned who could obtain the votes of any 50 electors (each elector being required to furnish a list of the candidates whom he preferred, in the order of his preference, so that, on the one hand, no vote would be superfluous, and, on the other, any voter would be able to co-operate with any one of the rest for the purpose of making up the necessary quota of 50), the object which is essential to real representation—the actual possession by each elector of an equal share in the nomination of the ruling body—would be either completely or approximately attained. This is, in effect, the scheme of Mr. Hare; and it supplies a complete and satisfactory solution of the problem to be solved. That which it ensures is not so much the "representation of minorities" (which Mr. Hare very properly declines to accept as a correct designation for the purpose which he has in view) as the wider and more important object of giving to every enfranchised person his due weight in the political scale—of imparting throughout the country a real and practical value to

the possession of a vote, a sense of responsibility and a healthy and elevating motive of action to the voter, and a consequent character to the representative assembly far above that which it has hitherto borne. Being no longer restricted to the two or three candidates, perhaps wholly unknown to them, whom party organization or the local attorney has provided, the electors would have before them the wide field of choice which the general published list would afford, and which would be enriched by the names of men of distinction and ability in every branch of knowledge, who would offer themselves with a fair prospect of obtaining the "quota" necessary for election. Numbers of electors who now, for want of a better motive, are induced to use the franchise as a means of obtaining some personal advantage for themselves, would employ it, as it ought to be employed, in giving expression to their political views, or in returning to parliament some person on whose judgment and wisdom they could rely; while every constituency would be represented by a member whom it had unanimously chosen, and no longer as now by a member of whom it may know nothing, and of whose opinions a considerable number of the individuals composing it may heartily disapprove. It has been already remarked, that the local character of the representation would still in a great measure be preserved; nor is it possible to conceive that any loss would be sustained by the principle of localization (the value of which, whatever it may hitherto have been, is rapidly receding before facility of intercourse, diffusion of know-

ledge, and increased political sympathy) sufficient to counterbalance the immense advantages of the scheme. It will be seen from what has been said how utterly inadequate to satisfy the requirements of the case, and of how little remedial value compared with the plan of Mr. Hare are the proposals for the "representation of minorities" by such methods as that which, by assigning three members to each constituency and allowing each elector to vote only for two or only for one of them, or retaining his three votes to give them all to one candidate, would enable a minority not less than one-third of the constituency to return one member. An expedient of this kind, though an improvement so far as it went, would be no more than a very partial remedy for one form of the evil, and would be valuable chiefly as an admission of the true principle and a step to its adoption.*

Thus far we have been considering in what respects the House of Commons fails to represent those by whom it professes to be elected, and what is the true nature of the remedy required. We have now to consider the charge which is most frequently and urgently brought against it—that it does not even profess to represent more than a section of the community not much exceeding one-seventh of the whole adult male population; and to inquire whether this limitation is one which it is desirable, wholly or partially, to remove.

* Some admirable observations upon this branch of the subject will be found in the 7th chapter of Mr. J. S. Mill's work, "Considerations on Representative Government."

It may be stated confidently and at once that there is one portion of the community whose exclusion from the franchise, except in so far as it may be a matter of practical necessity, is unjustifiable, and which consists of all who are equal in point of social position to existing voters; since it must be considered as an established proposition that the enfranchisement of every person who comes up to that particular standard of property and intelligence is possible without any such detriment to the general welfare as to throw doubt upon its expediency. Two classes of persons are now excluded in contravention of this rule. First, those who are excluded by a condition of enfranchisement which neither is nor pretends to be any test of social position—that of residence in one locality rather than in any other. Of whatever importance, as a criterion of social position and therefore as a qualification for the exercise of political functions, may be the possession or occupation of a house of a certain value, the mere place of residence can certainly be of none. There may be some foundation in reason for refusing electoral power to any person because his rent is 6*l.* rather than 10*l.*;—there can be none for refusing it to him because he resides in Hartlepool rather than in Sunderland,—in Chelsea rather than in Lambeth. There might be some apparent, though there would be no real, justification for this favouritism if the privileged places were of greater numerical importance than the unprivileged; but the fact is notoriously the reverse,—there being many towns with small populations in which an inhabitant otherwise qualified has a

vote, while there are many others with large populations in which he has none. The second of the two classes consists of those who are excluded, not simply because they reside in one part of the country rather than in another, but because there is a higher electoral qualification for the place in which they reside than for other places;—of those who are debarred from the suffrage by the regulation, and by that only, which gives the franchise in boroughs to householders paying a rent of not less than 10*l.*, and in counties to householders paying a rent of not less than 50*l.* In respect to both these classes of unenfranchised persons the case for an extension of the suffrage is complete and unanswerable.

There remains the important question — whether (assuming that the existing conditions as to age and sex, to which might properly be added the payment in some shape or other of taxes, are expedient, and setting aside exceptional disqualifications) there is any good reason for the denial of political liberty to the rest of the community. The alleged ground of that denial is the danger of misgovernment consequent on their admission,—the argument being that, since the political liberty which is conferred by representation is valuable only as conducive to good government, any extension of that liberty the probable result of which would be a loss on the score of good government would be destructive of its own object. But we have already seen that, while one of the objects of representative institutions is political liberty as a means of good government, the other and far more important object

is political liberty in itself;—that as regards any proposal for an extension of the suffrage the question is, not whether it would lead to misgovernment, but whether it would do so in such a degree as to outweigh the intrinsic advantages of the political freedom which it would confer;—and that to produce this effect the amount of misgovernment apprehended must, looking to the relative importance of the two objects of representation, not only be considerable, but extremely and disastrously great. It has not been thought necessary in this paper to advance arguments to prove what has been said as to the comparative value of those objects. It is sufficient to observe (as has been observed already) that political subjection is an evil of precisely the same kind as slavery, and in degree by no means so far removed from it, even in modern times, as to prevent the two evils from being justly regarded with the same kind of aversion; and that the sacrifice of material well-being at which it is worth while to purchase emancipation from slavery may assist in forming an estimate as to the cost in point of misgovernment at which it is worth while to purchase political freedom.

In order, then, to arrive at a sound decision upon this question it is necessary that we should inquire in what degree misgovernment might reasonably be apprehended as a consequence of any considerable extension of the franchise. The only ground for anticipating any such consequence at all is, that if the change were made the less numerous of the two great classes into which society is divided would on any

disputed question be outvoted by the other. Two distinct evils are expected to follow from this predominance of the more numerous class. The first is, that this class would, in cases where their respective interests appeared to be opposed, legislate with a view to its own supposed advantage, to the immediate detriment of the other class and to the detriment, immediate or ultimate, of all—in other words, that which is known as "class legislation." Now it cannot of course be meant that the democratic as compared with a less popular form of government must necessarily and in all cases be objectionable on the ground of "class legislation." Other things equal, class legislation when the class which legislates consists of six million persons is a less evil than when it consists of one million. Other things equal, class legislation by the small minority which now predominates in this country would be a greater evil than class legislation by the majority which would predominate under a greatly reduced franchise. But it is said that in this country other things are not equal. The condition of the more numerous class is (it is contended) such as, in estimating the comparative evil of class legislation in the two cases, to overbalance the consideration of its numerical importance. The measures which for their own supposed advantage they would adopt, if invested with supreme authority, injurious immediately to the other class and injurious ultimately to all, would be greater both in number and in the degree of the injury which they caused, than the measures of the same character adopted by the minority now in power.

Being less instructed, they would be more frequently blind to the evils which a course of action apparently beneficial to themselves would sooner or later inflict upon them; being poor, they would be more disposed to disregard, even if they saw it, the ultimate injury for the sake of the immediate gain. Thus, though the welfare of the majority is more important than that of the minority, and though, if the interests of either are to be sacrificed to those of the other, it is better (supposing the sacrifice to be in both cases equally great) that they should be those of the minority, yet the evils of class legislation by the former would be greater than those of similar legislation by the latter, because the mischief which it would cause would be more frequent and more severe. The substitution of class legislation by the numerical majority for that which exists under the present system would, in one respect, be a gain to the community. It would be a gain in so far as this—that any immediate benefit which such legislation implies to the dominant class would be received by a greater number of persons than at present. But, on the other hand, the injury which it would inflict upon all would be greater and more often repeated; and the loss in this respect would be greater than the gain in the other. Such appears to be the only sense in which "class legislation" can with any reason be adduced as an argument against the proposed change.

The second of the two evils apprehended from such a readjustment of political power is, that many of the measures adopted by the Government with a view to

the interests of both classes equally would be of a seriously objectionable character; first, because the dominant class, being poor, would regard the immediate and pecuniary interest of the two classes rather than their ultimate and higher interest; and secondly because, being ignorant, it would, where there was any room for question, frequently form wrong conclusions as to the course which would be most conducive to the general welfare.

There can be no doubt that, as against a general admission of the now unenfranchised classes to the suffrage, these considerations are entitled to much weight; but there are others, not obvious at first sight, which tend to diminish their cogency. In the first place, the immediate cause of the evils apprehended—the superior power which would be possessed in the legislative assembly by the numerical majority—would exist in a much less degree if (as it is here assumed would be the case) a more rational and equitable system were substituted for that of election by local majorities. If, by the adoption of such a scheme as that proposed by Mr. Hare, the vote of every elector were brought into action and had its due share in the composition of the governing body, the wealthier and more instructed part of the nation would be represented in proportion to its numbers, instead of being, as it would be if the existing electoral machinery were retained, wholly unrepresented because it was in a minority. Moreover, the members returned by this class, though forming a minority of the House, would derive from their intellectual and moral superiority an

influence which would go far to compensate for their inferior numbers. The source, therefore, of the two kinds of misgovernment which are anticipated from the change—class legislation and ill-considered or injudicious political action—would be far less operative than the argument supposes. In the next place, the class legislation which under the new order of things would be substituted for the class legislation now existing would be in one respect the less objectionable, because the less complete and exclusive, of the two, since it would be modified and held in check by the representatives of the least numerous class; whereas the class which is now the least numerous is absolutely unrepresented. Nor must it be forgotten that the popular assembly would represent those whom it is proposed to enfranchise not as they now are, but as they would be if a voice had been conceded to them in the government of the country; and that the mental improvement which they would derive from the exercise of the privilege might possibly be immense, and would certainly be considerable. It is reasonable also to suppose that in ordinary times the members whom they returned would not be mere delegates representing their extreme opinions, but rather leaders in whom they could trust, and to whose better judgment they were willing to submit. Nor can it be said that, with regard to questions which concerned the common interest, the more numerous class, though comparatively poor and ignorant, would be invariably or even generally on the wrong side. Before this can be asserted, it must be proved beyond possibility of doubt

that such questions as those which relate to the privileges of the national Church, to public education, to the foreign policy of the country, and to other subjects of extreme importance, have been rightly decided by the class which has hitherto held sway. In one respect, indeed, the poverty of the majority would be in favour of good government, since it would incline them to insist on a moderate scale of public expenditure, and on an economical conduct of public business, the substitution of which for the wasteful administration shown, especially of late years, to be incidental to a restricted suffrage would be a great and important improvement.

Notwithstanding these qualifying circumstances, it would be unreasonable to deny that, in the absence of experience in a similar case, the concession of manhood suffrage in this country would, looking to the actual condition material and mental of a large number of the operative class, be attended with serious risk. There can be no doubt that many of those who are now unenfranchised are poor and uneducated in a lamentable degree, and that the fear that their poverty and ignorance would, through their representatives, very injuriously affect the legislation and policy of the country is far from being without foundation. For although, as already observed, the superior qualifications of the members returned by the minority would be of powerful countervailing influence, yet where the passions or physical necessities of the majority of the electors were concerned, they would probably use the power which they would undoubtedly possess to give

effect to their own views, and would in such exceptional cases send to parliament members pledged to support those views. Communistic laws, and laws more or less directly and unduly affecting the rights of property, and, under the head of general legislation and policy, a less strict observance of the obligations contracted by the government towards its own subjects and towards foreign nations, wherever those obligations pressed hardly upon the indigence of the majority, might not unreasonably be apprehended. It is indeed far from improbable that such apprehensions might prove unfounded. Some of the reasons which tend to modify them have already been stated; and we have seen that, in several important respects, measures which would be considered as improvements by many thoughtful and disinterested men would be the probable result of the change. But, on the whole, and prior to any satisfactory experience to the contrary, it may be admitted that the indiscriminate gift of political power would be likely to bring with it a degree of misgovernment more than sufficient to counteract even the great intrinsic value of the political emancipation which it would imply.

But, though this may be admitted when the proposal is to give a share in the representation to every person of full age and not exceptionally disqualified, the case is very different when what is proposed is only a large but limited extension of the franchise. There is, undoubtedly, a very considerable number of those now unpossessed of votes of whom it may safely be said that the benefit which would be derived not only by

themselves but by the community at large from their admission to political power as an advantage in itself would by no means be counterbalanced by any loss which on the score of good government it might entail. There are considerations, as has already been shown, which make it possible, though not probable, that no such equivalent injury would follow the concession even of universal suffrage; and the possibility becomes a certainty when the same reasoning is applied to the case of the better educated and better paid portion of the operative class. It is unquestionable that a very large section of that class is as least as well off, whether as regards their material or mental condition, as were those to whom the franchise was given by the Reform Act. And if this be conceded, the concession amounts to an acknowledgment of the claim of that section to the franchise. For, admitting that there is a certain standard of intelligence and property below which it is dangerous to invest with political power, no one in these days will be disposed to deny (though the imperfection of existing electoral arrangements has prevented the proposition from being thoroughly tested), that the electors under the Reform Act come up to that standard. What are the real limits of that section, and what is the criterion by which the claim of any individual to belong to it may be most satisfactorily ascertained, are questions on which statistical information is as yet extremely imperfect, and a reply to which would be one of the most important preliminaries to the preparation of a Reform Bill. The proposal of a 6*l.* suffrage (though it might probably be adopted

with perfect safety) appears to have been made very much at random, and to be based on no knowledge even approaching to accuracy in regard to the number or the character of those whom it would enfranchise. The problem is to discover what is the best test which will provide for the admission to the franchise of that number of persons, certainly very large, between whose qualifications for it and those of a still more numerous class below them there is a broad line of distinction. That some such line can be drawn there is sufficient reason to assume: but the duty of drawing it, and of deciding as to the best mode of ascertaining for electoral purposes to which side of it any member of the community belongs, has never yet been properly performed.

It has been suggested by Mr. Mill, while admitting the serious dangers which would attend upon universal suffrage, that the case should be met by an arrangement which, while enfranchising all who possessed the simplest rudiments of education, would give a plurality of votes to the more instructed minority, on the ground that, though every person of full age and not exceptionally disqualified ought to have a voice in the management of affairs which concern himself and the rest of the community, he ought not to have an equal voice in them with another person intellectually his superior. Upon this it is to be observed, that such an arrangement would not confer political liberty upon any one to whom it gave only a single vote. We have seen that no one can properly be said to be politically free whose share in the election of the ruling power

can be rendered nugatory by the superior share in it given to another. If therefore this suggestion were acted upon, real political liberty would still be denied not only to those whose admission to the suffrage could not, as we have found reason to fear, be effected without undue risk, but also to those for whose continued exclusion there is (as has been shown) no sufficient ground. It seems obviously better to give the substance of the privilege to those upon whom it may be safely conferred, than to give, in the manner proposed by Mr. Mill, the shadow under the name of the substance to the entire number. As against a graduation of the suffrage with the same object according to the amount of property possessed by the voter, tested by the value of his house or by the payment of rates or in any other manner, precisely similar reasoning applies; but with this addition, that in this country political privilege conferred solely on account of superior wealth is looked upon with peculiar aversion. By the proposed arrangement this cause of offence would be given in a manner direct and undisguised beyond all precedent, and which would ensure for it an unpopularity such as might alone be sufficient to prevent its adoption.

In the foregoing observations an attempt has been made to indicate the principles and method of proceeding upon which any plan of reform ought to be framed such as would meet the real exigencies of the case otherwise than by a mere temporary concession to unreflecting clamour. What is required is some general, consistent, and comprehensive measure with a

threefold object: first, to make representation once for all that which it professes to be, by providing, under arrangements which would adapt themselves to the changes necessarily incidental to the progress of time, for a more equitable apportionment of members to constituencies, and for the enfranchisement of that class of so-called electors who, finding themselves in local minorities, are in reality without the benefits of representation; secondly, to enfranchise, so far as is possible in the absence of a perfect test, all, without exception and wheresoever they may reside, whose condition in life is not below a certain fixed level; and, thirdly, so to fix that level as to admit to the suffrage that large number of persons now unenfranchised whose admission would (as we have seen) be attended by no such probable detriment to the general welfare as to outweigh its advantages. For the attainment of the first of these objects, which is by far the most important, since it is no less than the construction of a sound basis of national representation, but with respect to which there is much of what may be termed mechanical difficulty, a machinery has been provided by Mr. Hare so admirably adapted, that it may be said to be the natural and proper instrument for the purpose. Public writers and speakers, who create in some sort the very evil which they assume, are in the habit of affirming that such a scheme will never be listened to by the people of this country. It is difficult to believe that the people of this country will really require that this subject shall always be dealt with by those who govern them without any

regard to the rules of political science (which is only another name for common sense applied to politics), contemptuously rejecting every well-considered measure, and giving heed only to those which have thoughtlessness to recommend them. But, if this is indeed the case, and there is really no hope of anything like a systematic and rational reform, any attempt to throw light upon the real nature of the problem will not have been without its use. Something will have been done if, while condemned to work in the worn-out grooves which tradition has laid down, reforming legislators have before their eyes, and avail themselves whenever they can, of the true conditions of the question; if they remember, and act upon the recollection, that it is not by any mere "redistribution of seats" as commonly understood, or concession of the franchise to lodgers, or random depression of the electoral standard, nor by a combination of such expedients, that any statesman-like improvement will have been effected, unless some attempt is at the same time made to substitute reality for fiction, a living and energizing presence for little more than the lifeless image of political freedom, and order for the chaos which now bears the inappropriate name of a representative system.

ON "INTERVENTION," MATERIAL AND MORAL.

In an ordinary community violence and bloodshed are prevented, and the rights of individuals so far as is possible secured to them, by legal institutions. Laws, and executive arrangements under the sanction of laws, are made for the protection of person and property; tribunals are erected, some for the trial of persons charged with offences against those laws, others for the settlement of disputes and conflicting claims which cannot be amicably arranged; and means are provided to prevent any attempt at a violent solution of such differences. These institutions depend for their efficacy mainly upon their fulfilment of two conditions,—first, that the tribunals thus created are impartial, that is, that they are composed of men who have no personal interest in the result of their decisions; and, secondly, that the community has at its disposal such an amount of physical force as precludes all chance of successful resistance to their decrees. If the first condition were wanting, such measures might prevent violence and bloodshed, but they would entirely fail to afford security for just dealing as between the members of the community. If the second condition were

wanting, they would accomplish neither one nor the other of these objects.

In a community composed of nations no such institutions are possible. Tribunals might indeed be established, consisting of one or more states, for the settlement of disputes and claims which did not admit of amicable adjustment, and for the trial of offences against the recognised rights of property or sovereignty resident in each state; but such tribunals would be inefficacious, because it would be in the power of any nation, unless to an exceptional degree deficient in physical force, to resist their decisions with more or less probability of success, and because the condition of international relations is such that in almost every case brought before a state thus armed with judicial authority its own interests would in some way or other be concerned. Thus the first of the conditions above mentioned—that of impartiality—as well as the second—that of sufficient coercive power—would be absent from such authorities. Regular executive arrangements for the preservation of order and the prompt suppression of violence are for the same reasons impracticable in such a society. Its members may, and do, agree among themselves, tacitly or explicitly, that certain proceedings on the part of one towards another analogous to outrages upon person and property in an individual community are crimes, and if possible to repress them; and they may agree, and have agreed, with a view to the general welfare, upon rules for the settlement of certain questions of international equity which experience has shown to be constantly arising in

their dealings with each other whether in peace or war. But even these arrangements, expressed or understood, which are dignified with the name of "international law," and which if enforced without resistance would mitigate only to a small extent the evils consequent on the absence of legal institutions, they have no absolute power to enforce. Any nation may, if it pleases, resist to the utmost the application of such regulations to itself; and even in the event of a combination of powerful states to enforce them, which international jealousies make difficult and rare, an expensive and calamitous war might be necessary for the purpose.

The community of nations, then, is a community in which law, in the ordinary sense of the term,—the sense in which it subsists and is effectual in an ordinary society,—has no existence. The natural consequences of anarchy follow. The military power possessed by each nation being its only means of defence against aggression or insult, and of obtaining that to which it considers itself entitled, or which without any such consideration it is resolved to obtain, blood will from time to time be shed, and acts of injustice will be committed or contemplated, either by means of successful war, or, where there is on the side of those who commit or contemplate them a great superiority of force, without any disturbance of the peace of the world. Is it, then, or is it not, the right or the duty of a nation, besides providing for the defence of its own territory and for the maintenance of its own rights and interests, to interfere by force

with the proceedings of one state towards another or between two parties in the same state, for the purpose either of preventing bloodshed or of securing justice, or for both these objects combined? Such is the question which the more powerful nations are perpetually called upon to solve, but of which, though it has become the battle-ground of conflicting opinions whose watchwords are "intervention" and "non-intervention," very little attempt has yet been made at a scientific solution.

Now it is obvious that there are many cases in which a nation may consider that it has the "right" to intervene, but in which it may be deterred from doing so by the reflection that intervention could only be successful either at the cost to itself of irresistible armaments, or at the cost to itself and to the world at large of actual war. In order therefore to determine whether, in a given state of affairs not requiring action on account of its own rights and interests, a nation ought to intervene, it is necessary to inquire first, whether the case is one in which it might properly intervene supposing that it could do so without expense to itself, and without actual war; and secondly, if so, how far it is justified in intervening, if one or both of these evils must be the consequence of the measure. If the distinction between these two questions had been borne in mind, much confusion of thought and misapprehension on this subject would have been avoided. It is objected, for instance, to the supporters of non-intervention, that they are advancing a "selfish" policy. It is clear, however, that the

objection cannot possibly apply to an advocacy of it which is based upon the ground that a negative answer must be given to the first of these questions. A course which is adopted because the opposite course is unjustifiable is not adopted for selfish reasons. It is only where non-intervention is the result of considerations such as those to which the second question—the question of cost—relates, that any pretext whatever is afforded for imputing selfishness to the policy. How far such an imputation would be well founded we shall presently have occasion to consider.

First, then, what are the cases in which a nation would have a right to intervene, supposing that it could do so without expense to itself, and without having recourse to war? It would seem that, in the general opinion, there is on such a supposition scarcely any limit to that right, at least as between distinct nations. Yet it is certain that in a large class even of international dissensions no such right can exist. The disputes or conflicts in which any two nations may engage are many of them of a kind in which a third nation not itself concerned in the result has no sort of qualification for passing judgment, and therefore no right whatever to interpose. In general, it may be said that where the subject-matter of the quarrel is one which, fairly considered, admits of dispute,—where the proceeding which it is proposed to prevent is one of which the criminality or injustice is matter of question,—in other words, where the case is such as, if brought before a legal tribunal, would be decided upon not as presenting no sort of doubt or difficulty, but

only after discussion or deliberation,—"intervention" is not justifiable. In such circumstances neither of the two nations concerned can be expected, or ought to be compelled, to accept the decision of a third, which is neither invested by common consent with judicial authority, nor is possessed of any qualities entitling it to decide. The tribunals by which, in an ordinary community, such differences are settled are deliberately selected by the society itself, are supposed to be endowed with information or intelligence peculiarly fitting them for the purpose in view, and are understood to be wholly free from personal interests in the questions submitted to them; in all of which qualifications (in two of them invariably, and in the third very frequently) an intervening state is deficient. As regards intelligence, not only is there no special qualification, but the dense ignorance which exists in all countries as to the political condition of others, and as to the views, opinions, and modes of thought prevalent in them, and the apparent impossibility which pervades a body-politic of looking at international questions from any point of view but its own, constitute a positive disqualification for judicial power. As regards impartiality, there is, indeed, by the supposition, no such direct interest in the issue as could be supposed to justify intervention; but the circumstances of the case are almost always such as to ensure a very decided bias in the judgment formed of them in a third country. Considerations as to the manner in which its own trade will be affected, jealousy of the growing wealth and power of other states, historical associations, dynastic

alliances, antipathies of race, and prejudices of education, as well as other causes, operate with nearly absolute certainty, where there is any doubt as to the justice of the case, to preclude impartial judgment. Accordingly, we find that the verdicts pronounced by nations upon the conduct of their neighbours have, in by far the greatest number of such instances, been wrong. "In the large volume of human folly there is no page longer or more discreditable than that which contains the judgments of nations upon each other." * Even if this were not the case, the enforcement of such judgments would be indefensible, the objection to it being not only that they are frequently or generally wrong, but also that those against whom they are directed cannot fairly be expected to accept them. It may be said that, since the community of nations is one in which law, as ordinarily understood, does not exist, the world must be content with the best substitute that can be found for it, and that it is better that the peace should be preserved by the self-constituted authority of any one or more states, to whatever objection on the score of justice this may be liable, than that it should be perpetually broken for the purpose of deciding questions otherwise insoluble. But this argument proceeds upon a wrong estimate of the comparative value of justice and of peace. It is true that the question at issue is as likely to receive an unjust solution when it is settled by a trial of strength between the disputants, as when it is settled by the fiat of an authority incompetent to decide. But in the former

* Sir G. C. Lewis, "Dialogue on the Best Form of Government."

case the nation which, being in the right, is compelled to yield, has at least had the opportunity of using its best efforts for the satisfaction of its claims, and the chance of successfully asserting them; in the other, it is allowed no voice whatever in the matter. In the one case there is the single injustice of a wrong solution; in the other there is the double injustice of a wrong solution, and of its enforcement by an unqualified authority.

It is, of course, possible to conceive a condition of affairs in which the rule here contended for must be exceptionally disregarded. A war, for instance, carried on with unusual ferocity, protracted beyond all ordinary duration, and of which the termination seemed still distant, might be an instance of the kind; for the necessity of putting an end to such a war might have become paramount to all other considerations. But in order that a particular event may be entitled to such exceptional treatment, it must possess strongly marked features distinguishing it clearly from almost every recorded occurrence of a similar kind.

It appears, then, that there is a large class of international dissensions in which a state not directly interested in their issue could not under any circumstances justifiably interpose. But there is another class of them in which the interposition of such a state would, apart from all consideration of its cost in money and in human life, not only be justifiable but desirable. A clear and unquestionable breach of any of the well-understood and generally recognised rules of international law (including among them the obli-

gation of such treaties or diplomatic compacts as have not been invalidated by subsequent events or by the mere progress of civilization*) would be one ground for such interposition. The reasons which we have found to exist against it, where the point at issue was one admitting of doubt and argument on the score of legality or justice, are here inapplicable. Not only a combination of states, but, if that were impossible, any one state, would have the right, on the present hypothesis, to compel obedience to a rule which had been made by all of them for the general good. The want of those attributes (regular constitution, special intelligence, and impartiality) which, as already observed, justify the coercive action of legal authorities, does not in this class of cases, as it did in the former, disqualify a nation from acting as a substitute for such authorities. There being no reasonable doubt that the crime is being committed or is contemplated, and none at all as to the identity of the criminal, there is no question here of misjudgment either owing to ignorance, or to bias arising from personal interest for or against the accused. The defect of self-constitution is the only one of the three from which the intervening authority, if it consisted not of a general congress but only of one or two or a minority of the whole body,

* Contingencies in which any nation is required by the stipulations of a treaty, either singly or with other countries, to interpose (among which some of the proceedings recently taken by Germany towards Denmark in reference to Schleswig-Holstein must, it would appear, be classed) are not here in question. The intervention considered in this paper is that to which nations are not bound by any special and explicit obligation.

would suffer; but this must be considered as a defect of little importance when set against the object of the intervention. For the same reasons, the decided and obvious breach of any great principle of international justice sanctioned by the moral sense of mankind, or the violation of any of those axioms of right and wrong which, not falling within any positive rule of international law, are yet fully established and unhesitatingly appealed to by nations in their intercourse with each other, or which, though they may not be accepted by all governments, are so by the majority of educated men, would afford another ground on which intervention might be justifiable. The wholly unprovoked aggression of one state upon another, or the seizure of its territory without anything like a fair or rational excuse for doing so, would be obvious instances of such misconduct. The French occupation of Rome—one of the most lawless acts ever committed by a nation—and the suppression in 1849 by a Russian army of the Hungarian insurrection, are clear examples of it; for, in whatever cases interference in the civil dissensions of foreign states may be justifiable, it is certain that to assist a government in crushing the liberties of the people over whom it rules is an act of flagrant immorality. The two latter instances are of value as illustrating with singular force the distinction between the two questions now under consideration; for they are of a kind in which, as regards the part to be taken by this or any other country, the duty of intervention considered apart from the price to be paid for it, and the duty of non-

intervention in the actual state of the case, are equally clear.

Thus far with respect to "intervention" as regards the proceedings of one state towards another. Take next the contingency of a contest between two parties in the same state. It is easy to see that in this case the objections to intervention are far more cogent and comprehensive than when the quarrel is between distinct nations. The general body of states has obviously far less concern with the internal affairs of one of its members than with the proceedings of its members towards one another. The principle which in an ordinary community is fully recognised that each of the individuals comprising it ought to be allowed to regulate his own concerns as he thinks fit, so long as he abstains from injuring others, holds good also for the community of nations; and this principle, superadded to the reasons which we have found to exist as against the right of interference in a large class of international transactions, tends to confine that right within the very narrowest limits as regards civil contests. Such interference is, as we have seen, justifiable, even as between distinct nations, only when some universally admitted rule of international law, or some great principle of justice or humanity, has obviously and undeniably been infringed. As between two parties in the same state, international law does not apply; and, as regards the great principles of justice or humanity, it is obvious that the case is very different when they are contravened by a member of the community, not as against other members of it, but as

against itself. Take the frequent instance of a people rising against tyrannical rulers. On which side justice lies does not admit of a doubt. Yet even in this case foreign intervention cannot be justified, and that for these reasons:—First, That the wrong done is not to any individual of the society of which the interposing state is a member, and as a member of which, and as such only, it has any right to interfere; and, secondly, because such intervention would violate the salutary rule which, apart from all question whether it is on the right or the wrong side, condemns the interference of one state in the internal concerns of another. The justification of this rule as applicable to the contingency now under consideration is sufficiently evident. For a people which owes its freedom to foreign bayonets, and not to such a sense of the value of the possession as would give it courage and endurance sufficient to ensure the ultimate success of its efforts, will neither enjoy nor preserve it.

It appears then that, except in those rare and extreme cases in which, in political as in other sciences, it is sometimes necessary to set aside established laws, intervention in the civil differences of foreign states is, irrespectively of all question as to the amount of resistance with which it will be met, unjustifiable. The conditions of the question are altered when one of the parties to the contest is of a distinct race, or has preserved a separate nationality, as for instance in the struggle of Belgium with Holland, of Poland with Russia, or of Italy with Austria. In so far as such conflicts are not between a people and its

native rulers, but of a people against the superior power of foreign rulers, they fall within the rules which we have found to be applicable to quarrels between distinct nations. In so far then as they are of this character, whenever the justice of the case is palpably and wholly on one side, so that by the conduct of the opposite party either some universally recognised rule of public law, or some fundamental principle of morality, or some undoubted right incidental to humanity, such as that of a nation to reject the yoke of a foreign government, has been contravened, there can be no doubt that intervention would, on our present supposition that its object could be effected without expense and without war, be both lawful and desirable. But, in each instance, the double category to which such contests belong, and the degree in which they belong to each, must be taken into consideration in any question as to the right of intervention. In the contest, for instance, of Italy with Austria the element of distinct nationality so far predominates as that the case may fairly be considered to come under the rules by which the right of intervention between separate nations is determined; and, judged by these rules, it is a case in which intervention, on the present hypothesis, might properly be exercised. As regards Poland, on the other hand, and as regards Hungary, the occurrences have in their nature more of insurrection against native rulers than of resistance to a foreign yoke, and in them therefore the right of a foreign state to pass judgment is less clearly assured.

We have hitherto considered the question as one respecting a single state acting by itself. It is evident, however, on looking to the grounds of the conclusions at which we have arrived, that the association with it of one or two other states cannot materially modify those conclusions. And, practically speaking, it is as concerning the action of one, or two, or at most three states, that the question presents itself; the conflicting interests, real or supposed, of nations in general rendering them, amongst other causes, unable in most cases to arrive at, and unwilling to attempt, a solution by means of a congress. But in order that the inquiry may be complete, it is necessary to consider whether the case would be altered if the decision were to emanate from such a body. In events of such a character as to fall within the class with respect to which we have found, as between distinct nations, that intervention was justifiable on the part of a single state, it is needless to observe that the interposition of a majority of states would be equally so; while it would be preferable as affording less excuse for that sense of injustice which is sure to be felt by any nation coerced by the authority of one or two others. But would it not also be justifiable in respect to events of that class in which we have seen that the intervention of one or two states, or of a minority of them, would not be so? Those events were, to describe them in general terms, events in which the matter in dispute was one with respect to which two opposite opinions might fairly be held, there being on each side as it is termed, a "colourable" case; and the ground on which it

appeared that in such circumstances intervention was indefensible was the absence from the intervening power of three elements of qualification for judicial authority—constitution by the general body, special intelligence, and impartiality. Now of these qualifications, the first, though not literally, may be considered to be virtually possessed by a majority of states. To the second, though the misapprehension which prevails in every nation in regard to the affairs of other nations is such as in a great measure to disqualify even a congress for the purpose under consideration, a majority of states has necessarily more claim than a minority of them. As regards the third, that of impartiality, there seems no more to be said in favour of the former than of the latter; the strong personal interest of most nations in every international difficulty which arises being, as already observed, one of the chief causes which have led to the opinion that a congress is a futile expedient for their solution. On the whole, it may be concluded, as regards differences of this class, that even a majority of the states composing the general community, though less open to objection as an authority pronouncing judgment than one, or two, or a minority of them, would not be free from it; and that coercion by such a body would be a measure of doubtful justice. It is true that power to make laws for the community must be considered to reside in a majority of its members. But it is one thing to make laws, and another to apply them when they are made to particular cases in which the interest of the administrators is involved. Where the dispute is

between two parties in the same state, the reasons which would condemn the intervention of a single state are valid also against that of a congress. In those extreme cases in which only we have found that intervention would be defensible on the part of a single state, it would obviously be more easy to defend, because bearing a greater weight of judicial authority, if it were the act of a congress.

Having thus obtained an answer to the first question —viz. what are the cases in which, its own interests not being concerned, a nation would have the right to intervene supposing that it could do so without expense to itself and without actual war—we proceed to consider the second, viz. how far, in such cases, a nation is justified in intervening if to do so successfully it must either incur the expense of irresistible armaments, or must engage in war, to its own detriment and that of the general community.

Now the proper objects of intervention are (as has been seen) first, to prevent or redress injustice; and, secondly, to prevent or put an end to violence and bloodshed. But there are many cases in which the first of these objects can be attained only by the sacrifice of the second. For it is obvious that, if the nation against which the intervention is directed is powerful and that on whose behalf it is exerted is weak, the intervention, so far from preventing war or shortening its duration, will in all probability ensure and prolong it. Even, therefore, if the question was one affecting the general interest only, it is obvious that a nation should be cautious in entering upon such

a war, and should carefully consider whether the case is one of those in which the sacrifice referred to will be necessary to success, and, if so, whether success is desirable. But the question does not affect the general interest only. It concerns also in an especial degree the interest of the interposing state itself. By the supposition, that state undertakes the task not for its own advantage, but for the sake of justice or of peace —that is, for the general good. By the supposition also it incurs some expense and suffering for that object; and the question is, whether it is called upon to incur or it is justified in incurring them. In the community of nations, owing to the absence of established laws, each nation is charged with the defence of its own territory and the maintenance of its own rights, and is compelled to support for the purpose large and expensive armaments. If it voluntarily goes beyond this, and submits to further expense for the sake of preserving peace or of enforcing justice as between other countries, it does more than can reasonably be required or expected of it. The burden of self-defence is one of the necessary evils which anarchy imposes; the burden of defending others is gratuitous and self-imposed. It is certain that no nation can properly be condemned because it refuses to injure itself for the benefit of the rest of the community. But though the refusal to adopt such a course may not be censurable, would not its adoption be justifiable and commendable? The answer is, that self-sacrifice is commendable only when the object in view bears a reasonable proportion to the amount of self-inflicted

injury. Unless there is a due ratio between the suffering submitted to and the object to be attained, self-sacrifice is not heroism, but Quixotism. But in counting the cost to a nation of any such act of generosity, it must be remembered that the cost falls with very different pressure upon the different classes of which the nation is composed." In almost every country there is a very numerous class of persons many of whom are undergoing the misery of absolute pauperism, and many more, "pressing hard upon the limits of subsistence," and who contrive to obtain the bare necessaries of life at the cost of unremitting labour. Now upon this class, comprising as it probably does the great majority of the working classes, any very considerable increase of taxation falls with disastrous and terrible effect. It is indubitable that any measure by which the national expenditure is largely increased makes, especially in this country, to many the difference between bare subsistence and destitution, to many more the difference between tolerable comfort and bare subsistence. It is a fact from which there is no escape. Either in the enhanced price of the commodities which they consume, or, if the additional taxation is so adjusted as to fall in the first instance upon the richer classes, in a reduction of the wages of labour consequent on the diminution of the fund available for its employment, those to whom the option is given of work, the workhouse or starvation, will bitterly feel the change; and, before the nation determines to take a step which is not required of it, and largely to increase its expendi-

ture for the purpose of intervention on behalf of others, it is bound to consider whether it has a right to inflict such an amount of suffering upon its own poor. If the measure were demanded by international justice—that is, by the duty which a state owes to the general community—the case would be different. But no such demand (as we have seen) is made. The question is one not of justice, but of generosity—of self-sacrifice not for imperative duty, but for gratuitous benevolence—an object for which, it may safely be said, no nation has a right to inflict acute misery upon a large part of its population.

From these considerations it seems to follow that any nation in which, as in this country, there is a class of any numerical importance which is habitually on the verge of poverty ought to abstain from all interference in international transactions not concerning itself which involve any material addition to its fiscal burdens. If, on the other hand, it can intervene with a probability of success and without any such addition to its expenditure, there is no objection on the score of a due regard for its own welfare to intervention; and the self-sacrifice which such an act involved would then be laudable. Such, for instance, might be the case where the nation against which the intervention was directed was greatly inferior in military strength, or where, by obtaining the assistance of other nations, the intervening state could bring against it a great superiority of force. It must be borne in mind, too, that the increase of expenditure objected to is such an increase as would seriously affect the indigent classes, and that, although

every addition to taxation must in some degree affect them, it is only by a very large and decided addition to it that they can be materially injured.

A mere literal fulfilment, however, of the condition here insisted on would not be sufficient. For a nation may be able to take up arms for the purpose of intervention without any addition to its expenditure, simply because it is in the habit of supporting large armaments in order that it may be in a condition to interfere whenever it pleases in the disputes of foreign states. For the due observance of the rule it is necessary that the force to be employed should not be considerably more expensive than that which the nation is compelled to maintain for the defence of its own territory and the protection of its own rights and interests. The maintenance of large armaments with a view to contingencies not affecting the national interests is in itself a violation of the rule. Thus, in order to justify the late intervention of France on behalf of Italy, it ought to be shown not only that she made for the purpose no such addition to her military establishments as added largely to her expenditure, but that those establishments were not habitually more costly than they would have been but for her general practice of interfering in quarrels in which she ss not concerned.

It appears, then, that in order to determine whether, in any given transaction of the class in which we have found in reply to the first question that the mere "right" of intervention exists, it ought either singly or with other powers to intervene, a nation has to consider first, with reference to the general interest,

whether its intervention would not occasión an amount of violence and bloodshed such as would be a greater evil than the wrongdoing which it is intended to prevent; and, secondly, with reference to its own interest, whether the proceeding would not involve so great an increase of taxation as would bring serious calamity upon a large number of the people. If these questions can be satisfactorily answered, intervention becomes in every such instance not only a right, but a duty.

The object of the preceding observations has been to arrive at some intelligible and rational rule by which a nation may be guided in any question of armed interposition in international or civil dissensions which do not concern itself. It would seem, indeed, that in this country the difficulty has been summarily solved by the determination to abstain absolutely from all such interference. But as this determination, in so far as it is not the product of mere selfishness, appears to rest on a very vague and indefinite foundation, it can scarcely be expected to be permanent. In the meantime there is another kind of intervention which appears to be tolerated by public opinion, and which, for want of a better term equally concise, may be called "moral intervention;" that is, interposition in the way of censure, protest, or remonstrance. This species of interference is the subject of much controversy. Some persons consider that a nation may properly and laudably exercise it in all instances of conduct on the part of one foreign state towards another, or of one party in the same state towards another party in it, of which that nation disapproves. Others are of opinion

that such interposition ought never to take place unless where the interposing state is prepared to follow up its remonstrances by war. Neither the one nor the other of these opinions seems to be founded in reason. With respect to the first, we have seen that it is only in a certain class of international dissensions, which it was the object of the first of the questions above proposed to define, that any state can properly claim to pass judgment, while in civil dissensions properly so called it has no right to pass judgment at all; and, on the other hand, there seems no reason why it should abstain from expressing its opinion merely on the ground that, from considerations of its own and of the general interest, it would not be justified in a declaration or in a menace of war. The only reasonable ground (as it would seem) on which such an expression of opinion could be considered inexpedient is that it would be useless. But this is certainly far from being the case. The instances in which judgment would be given are those in which some generally admitted rule of public law, or some broad and elementary principle of justice, has been unquestionably violated; and in these there can be no doubt that the influence of public opinion in other countries operates with a highly deterrent effect upon wrongdoers, or that a firm and temperate remonstrance on the part of any influential state may have the best effect, if not in preventing or mitigating the wrong, at least in preventing its recurrence. In evidence of this it is sufficient to point to the French occupation of Rome; in which the wrong done was not only clear to all rightminded persons,

but the wrong done, and the effect of public opinion in ultimately requiring its discontinuance, have recently been admitted by the perpetrator himself. The error so frequently committed by nations is not in protesting where they will not strike, but in protesting where they have no right to protest, that is, in cases not belonging to the category of those in which only they are entitled to pronounce an opinion. Upon the mischievous character of such proceedings there is no need to dwell. If they happen to be based on an erroneous judgment, they are of course directly productive of evil. If not, the nation whose conduct is condemned, firmly believing, and not without some reason, in the justice of its own cause, and at the same time feeling that even if it were in the wrong the dispute is not one on which its censor has a right to decide, rejects them with indignation or with ridicule, and the *entente cordiale* between the two countries is endangered, to the prejudice of the cause of peace; while, as regards the repetition of the same conduct by the same or any other nation, such remonstrances are wholly without preventive influence.

"Intervention" has here been treated of in that more usual and limited sense of the term in which it does not include either interposition for the purpose of protecting any rights or interests of the interposing state, or any action taken by it on account of the treatment of its own subjects in another. Such transactions fall within the scope of other branches of the general inquiry as to the circumstances under which a nation is justified in making or in threatening war.

ON MARITIME CAPTURE AND BLOCKADE.

By the Declaration of Paris in 1856 most important changes were (as is well known) made in regard to the trade of belligerents with neutrals or between themselves. Before that Declaration it had been held that the property of an enemy might be captured on the high seas in whatever ships it was conveyed. Thus the ships or goods of an enemy were in all cases and without qualification liable to capture at sea; and his trade with a neutral or with the hostile country was absolutely prevented, so far as it could be prevented by means of maritime capture. Since that Declaration the rule which has been established, as between the States which were parties to it, is as follows. The ships of an enemy are still liable to capture, without qualification, on the high seas; but the goods of an enemy are liable to such capture only in one case, *i.e.* if they are conveyed in enemy's ships. Thus, at one stroke, the trade of a belligerent with neutrals or with the enemy was (so far as liability to capture on the high seas is concerned)

set free; the only condition being, that it should be carried on in the ships of neutrals.

It must be carefully borne in mind, however, that the Congress of Paris did not attempt to call in question or to alter the general rule or principle of International Law under which the property of an enemy is liable to capture at sea. That general rule or principle remained unchallenged and untouched. What the Declaration of Paris did, was to establish an exception to the rule; that exception being, that the goods of an enemy, if carried in the ship of a neutral, should be free. The exception was, it is true, of such a nature as, in practice, to nullify to a great extent the rule; for its effect, as has just been observed, was no less than to set free (so far as regards voyages upon the high seas) the trade of an enemy, provided only that it was carried on in neutral vessels. But still it was only an exception—an exception which had become practically expedient on account of the increasing power of neutrals, and the difficulties which had long been experienced in the application of the rule to cases in which an enemy's property was carried in the ships of neutral States.

The important change thus introduced respecting the rights of belligerent nations, combined with the terrible effects upon trade of the civil war in America, has brought into prominent notice and discussion the whole question of maritime capture and blockade, with regard to which, though for different reasons, almost every one seems to consider that the law in its present condition is unsatisfactory.

And first, with respect to maritime capture. It is held by some persons that the Declaration of Paris went too far in the way of concession; by others, that it did not go far enough.

The former of these opinions there is little need to discuss. It is based upon extreme views as to the rights of belligerents; and such views, even supposing that they were sound, are so obviously and steadily losing ground with the progress of civilization that it would be mere waste of time to advocate or oppose them. It is not to be imagined that the maxim, "free ships, free goods," having once been established, will ever, in the face of the progressive development of commerce, and the increasing importance of the concession to neutral nations, be reversed.

By those who hold the opinion that the Declaration of Paris did not go far enough, it is contended that all private property, of whatever kind, on sea as well as on land, ought to be exempt from molestation in time of war, unless its capture or destruction is necessary for military purposes; and that this principle is already admitted in the established immunity during war of private property on land.

It will be seen from what has been said that the Declaration of Paris did not attempt to deal with the question thus raised. It proceeded upon the assumption that the general rule which subjects to capture the property of an enemy at sea was to remain in force. Whether this rule ought or ought not to be maintained is, however, a question well worthy of consideration. The statement that private property

on land is exempt from plunder during war is certainly true in the sense intended. The commander of a military or naval force would be held justified in seizing or destroying on land the private property of an enemy, so far as such seizure or destruction was necessary for strategic purposes; but no further. He would not, in the present day, be held justified in destroying or injuring a purely commercial town, nor in plundering on enemy's ground the property of private individuals, nor in seizing enemy's goods *in transitu* by land to some other country unless such a proceeding was directly conducive to some military object.

There is indeed one case, and only one, in which (as it would appear) a belligerent would claim the right to seize the private property of an enemy on land; and that is when the property is under conveyance to the country of the belligerent itself. There is a traditional rule that with the declaration of war (subject, however, to exception by special licence from the Crown) it becomes unlawful to trade with an enemy: and under this rule the goods of an enemy would (it is presumed) be seized at the frontier custom-houses. In this case, on land as well as at sea, the immunity of private property as a general rule during war may be supposed to be outweighed by the conflicting rule that trade with an enemy is unlawful. This rule, however, has of late been very partially acted upon, and appears to be singularly absurd. It is unfortunately necessary that, in endeavouring to injure an enemy during war, a nation

should do much that will more or less injure itself. But the idea of a rule upon which it is absolutely impossible for a nation to act without inflicting in every instance precisely the same amount of injury upon itself as it inflicts upon the enemy, is simply ridiculous. The blunder had doubtless its origin in the old notion that the export trade of a country is more valuable to it than its import trade. To seize a consignment of French goods bound for an English market causes to England precisely the same loss as it causes to France. Those goods (unless we are to suppose that they are sent to England for the mere chance of a market) are ordered and must be paid for —they may possibly have been already paid for— by an English merchant; and the loss is no more French than it is English. It would be a strange kind of warfare which should be carried on between two countries with the certain knowledge that it could by no possibility in any length of time give any advantage either to one side or to the other.

Is there, then, any valid distinction between private property at sea and private property on land, which would make reasonable the exemption of the former, and the non-exemption of the latter, from plunder during war? So far as the *goods* of an enemy are concerned, it is impossible to discover any such distinction. It has sometimes been contended that the immunity of private property on land is not founded on any general principle of international equity or humanity, but is a matter of military expediency, the disadvantage to the plundering army from the ex-

asperation of the occupants of the country being greater than the advantage from its plunder. But this assertion, besides being contrary to the facts of the case (for it is certain that no general serving a civilized state could allow his troops to plunder in an enemy's country without being held guilty, not of bad generalship, but of moral delinquency), is obviously inapplicable to the exemption from injury by a naval force of a commercial seaport town. As regards *the ships and their crews*, the case is different. It is argued, and with some reason, that the merchant ships of an enemy with their crews are the "raw material" of his military marine, and that to capture them is directly to cripple his naval power; so directly, at least, as to bring their capture fairly within the category of hostile measures which may be taken against him. This cannot be said of private property or of private persons taken on land. Indirectly, no doubt, to seize the private property of an enemy's subjects on land, or to seize the subjects themselves, though engaged in peaceful occupations, tends to diminish his military power; but it does this so indirectly as to have become in modern times unlawful.

It may be admitted, then, that with respect to the *ships and crews* of an enemy there is at present a not unfair reason for treating them as liable to capture, which reason does not exist in the case of private property on land. It is a reason, however, of which the force has been much diminished by the recent inventions of science, and will be more and more diminished as the difference between a merchant vessel

and a vessel of war, both as to construction and as to the qualities required for its navigation, becomes more and more marked. As regards the *goods* of an enemy being private property, and on the high seas, there is absolutely no such reason. Consistency requires that such goods should be exempt from capture, and that if found on board enemy's ships they should be restored to their owners.

The admission, implied in the immunity accorded to private property on land, of the principle upon which it is proposed to extend that immunity to private property at sea renders it practically unnecessary to discuss the justice or expediency of that principle. But it is to be observed, that there is much stronger reason for exempting an enemy's goods being private property from plunder at sea, as well as on land when *in transitu*, than for so exempting them in his own country. Such goods, if they are bound for a neutral country, are in a certain sense the property of persons in that country; and to subject them to capture is to that important extent a direct and flagrant interference with the obvious rights of neutrals. It is in fact a denial to neutrals of the power of trading, so far as their imports are concerned, with a belligerent State; and this not for any military purpose, but for the sake of the mere injury to the enemy's trade. Such a prohibition is opposed to the plainest dictates of equity. That either of two nations which for any cause however frivolous should think fit to go to war with each other should have power to intercept the trade of the other with countries which are friendly to it, un-

justifiable from the first, has become simply intolerable now that commercial intercourse has been freed from most of its trammels, and nations are for the most part dependent upon each other for the comforts and necessaries of life. That the Northern States of America, because they happen to have had a quarrel with the Southern States, should have had the power—not incidentally upon the necessary operations of war, but deliberately and directly—to cut off from England supplies necessary to the existence of a great part of her population, is in accordance certainly with international law, but in complete opposition to reason and right.

It appears then from what has been said that the rule of international law which subjects the private property of an enemy to capture at sea ought to be reversed; but that for the present, at least, an exception to the general immunity might not unjustly be made in the case of an enemy's ships and their crews. Thus the goods of an enemy would be free in whatever ships they were conveyed; while his ships, with their crews, would still remain liable to capture.

As regards the effect of such a change upon the interests of merchants and shipowners: it has been seen that by the Declaration of Paris the trade of belligerents with neutrals has been (so far as maritime capture is concerned) already in practice set free; because, unless carried in enemy's ships, enemy's goods are no longer liable to capture. To the mercantile as distinct from the shipping interest in belligerent or neutral States which have assented to that declaration

the change would therefore be of far less importance than it would have been before the Declaration. It would, nevertheless, be a measure of great importance to that interest, not only as placing at its disposal the mercantile marine of the belligerent State at no other disadvantage, when compared with neutral shipping, than the loss and inconvenience of delay in case the ship were captured, but as establishing on an intelligible and rational basis the freedom of private property from plunder during war. As respects the *shipowners* of a belligerent State, the change would at once remove in great part an objection which has been earnestly pressed on behalf of British shipping to the Declaration of Paris, viz. that in the event of England being engaged in war its effect will be to throw the carrying trade of the country into the hands of neutrals. That objection, which is avowedly based on the interest of one particular industry, is indeed obviously inadmissible as an argument against a measure intended for the advantage of the State as a whole, and of the general community of nations. Nor can it be said that, on the whole, the alteration effected by the Declaration of Paris would be injurious to that industry, unless upon the assumption, the reverse of complimentary to this country, that she may be expected to appear in the character of a belligerent more frequently than in that of a neutral. By the change, however, now proposed, the objection must in a great measure be obviated, since the main object of the complainants—the equal treatment of an enemy's goods, whether conveyed in his own ships or in those

of a neutral—would be attained. There would remain the comparatively small disadvantage, on the side of the ships of a belligerent, of the temporary detention of the enemy's goods which they conveyed.

It would of course be competent to a Congress of States to decide that even the ships of belligerents (with their crews) being private property should form no exception to the general immunity (supposing it to be established) of private property during war. Nor could it be said that such a decision was unreasonable. The utmost that could fairly be objected to it would be that it solved in a liberal sense a question of which there is at present much to be said on both sides, but of which, as has already been observed, modern science seems likely to confirm such a solution. Moreover, the error, if error there were, would be in the interest of humanity and mutual good-will; with this further consideration in its favour, that the exception thus disallowed would be one singularly liable to be used as an argument against the important and beneficent rule with which it would conflict;—an exception which would at once mar the triumph, and endanger the permanence, of the great principle upon which the direct suffering caused by the calamities and horrors of war would be confined to the fleets and armies by which it is carried on.

With respect to blockade, the law, which in principle remained unaltered by the Declaration of Paris, seems in its present condition singularly indefensible.

There is no general rule of international law more

clearly established than this:—that a neutral has the right to trade on his own account with either belligerent during war. Sir R. Phillimore, in his "Commentaries on International Law," says:

"There is no more unquestionable proposition of International Law than the proposition that neutral states are entitled to carry on, upon their own account, a trade with a belligerent;"

and whoever will refer to the principal authorities on the subject will find the statement amply confirmed. Great Britain, he goes on to say, has in two or three instances attempted to enforce a contrary doctrine; but in the first of those instances Great Britain, with her accomplice Holland, afterwards confessed that she was wrong; and in the other two rested her case, such as it was, upon a highly exceptional state of things, which was held to warrant a temporary departure from that which she admitted to be a general principle of law.

But to this rule there are necessary exceptions; and one of these is "the right," as Sir R. Phillimore expresses it, "to prohibit the commerce of the neutral with all besieged *and blockaded* places; and the duty of the neutral to abstain from all intercourse with them."* Now what is the ground on which this exception is justifiable? Simply the necessity of allowing nations which are at war to carry on against each other military operations, among which is the siege or investment of ports or places belonging to the

* Wheaton expresses it as follows:—"Another exception to the general freedom of neutral commerce in time of war is to be found in the trade to ports or places besieged or blockaded by one of the belligerent powers." (Part iv. c. 3).

enemy. There are military operations in which it is an object to cut off the supply of provisions or munitions of war from the enemy; and these operations, if nations are permitted to make war upon each other at all, they cannot be prevented from conducting, notwithstanding that in so doing they are acting in opposition to the general rule. In other words, the case is one in which the admitted right of neutrals to trade with a belligerent conflicts with and is made inoperative by the admitted right of belligerents to carry on hostile operations against each other. Such being the case, it is surprising that the right of excluding the commerce of neutrals by blockade should have been considered to hold good where the blockade is what is termed "commercial"—that is, where it is established for the express and single object of excluding that commerce, and not for any purpose which can be termed military. To say that neutrals have a right to trade with a belligerent, and at the same time to say that a belligerent may place at the entrance of any port of the enemy an armed force for the sole and ultimate object of preventing neutrals from trading with him, is a mere contradiction in terms. In the case of a military blockade the exclusion of neutral commerce is a secondary object: the ultimate object is to gain a military advantage. The secondary object is inconsistent with the principle of law which prescribes freedom of trade between neutrals and belligerents: but the ultimate object is to do that which in the interest of all nations belligerents are authorised to do during war; and this last consideration prevails. In

the case of a "commercial" blockade the ultimate object is to exclude the trade of neutrals, *i.e.* to do the very thing which the law of nations proclaims to be illegal. There is no conflict in this case of principles or of rights. The thing done is done in simple and direct contravention of a great legal principle, and not in virtue of any other legal principle which conflicts with it. To lay down the general proposition that the trade of neutrals with belligerents is free, and at the same time to legalise "commercial" blockades, is as absurd as it would be to say that a man has no right to take the law into his own hands, but that any man may on any occasion knock another man down. Either, then, the general rule must be reversed, or the exception, so far as it respects "commercial" blockades, must cease. Happily, there seems no sort of probability that the former alternative will be adopted. It is not in that, but in the opposite direction that future changes in the law of nations must be expected to tend. The monstrous doctrine which has been already referred to, that either of two nations which choose to quarrel with each other may intercept the trade of the other with a friendly State, having once been shattered to the extent of allowing neutral goods to be freely conveyed to the enemy, it is not likely that the breach will ever be repaired.

Thus far with respect to "commercial" blockade, considered as excluding the merchandise of neutrals from the ports of the hostile country. Considered as preventing the egress of enemy's goods, it is open to precisely the same objections as those which have been

urged in this paper to the capture of an enemy's goods at sea. It is equally irreconcileable with the recognised immunity of private property on land, and, as giving to any two quarrelsome nations an undue power of injuring third countries, equally opposed to the dictates of common sense and common humanity. And it is open to these objections in a degree by so much the greater, as blockade is a more effective instrument than maritime capture for the suppression of trade.

In so far, again, as commercial blockade operates to prevent the interchange of commodities between the belligerent countries, it is liable to the same objection as that above taken to the legal theory by which such a trade is prohibited. In this effect of it, commercial blockade cannot under any conceivable circumstances be of any possible advantage either to one side or to the other.

A blockade, then, to be, as it is termed, "binding," ought not only (in the words of the Declaration of Paris) to be "effective," but established for military purposes. And it ought to be so, not in any vague or indirect manner, but directly and in the fullest sense part of a strategic plan. That no consideration as to its indirect effect in diminishing the enemy's military power by cutting off from his people their sources of wealth is sufficient to justify blockade, is implied in the very rule which allows neutrals to trade with him. A blockade, to constitute an exception to this rule, should be clearly shown to have for its object direct military disadvantage to the enemy, or, in other words, direct military advantage to the blockading State.

Thus a blockade forming part of a plan of siege or investment, or for the purpose of preventing supplies from reaching a hostile army, or intended to prevent the egress of, or to injure in any manner consistent with the laws of war, an enemy's fleet, would be entitled to observance by neutral States. As to what did or did not constitute a "military" blockade within the meaning of the rule, difficulties would of course arise; but there is no reason to suppose that they would be either greater or more numerous than those which attend the interpretation of many other rules of international law.

The assertion which is frequently made that the abolition of "commercial" blockades would be unfairly disadvantageous to this country as a great maritime power is open to much discussion. It is surely matter for doubt whether the profit which England would derive from it as a neutral State with the greatest commercial navy in the world would not exceed any loss which it would inflict upon her as a belligerent State with the greatest military navy in the world; —for doubt, which the fearful calamity sustained by her in the former capacity on account of the civil war in America may help to remove. But if the assertion were true, it would be a reason (so far as it went) not for maintaining in its present state the law of maritime capture and blockade, but for abolishing the rules of law with which the right of commercial blockade is irreconcileable. There is no need to insist on the suggestion that a code of international law which is inconsistent with itself

requires alteration. A legal doctrine which declares that neutral trade with a belligerent is free, and at the same time declares that the whole coast of an enemy may be closed against neutral trade with the direct and ultimate object of excluding that trade, is self-condemned. The only possible mode of rectifying the anomaly, except the abolition of "commercial" blockade, is one which (as has been already said) is little likely to be adopted—a step backward to the principles and practice of a barbarous age.

ON CAPITAL PUNISHMENT FOR MURDER.

THE question whether or not the crime of murder should be punished with death is one of which public opinion has long recognised, and could hardly exaggerate, the importance. But, though felt to be of the deepest interest by all classes of society, and constantly discussed with extreme earnestness, this question can scarcely be said to have received its due share of dispassionate and scientific investigation. The weapons used in the controversy, among which declamation on the one hand and accusations of sentimentalism on the other hold the most conspicuous place, are numerous and energetically wielded; but little serious endeavour is made either to test the validity of each argument in itself, or, after collating and comparing them, carefully to consider on which side the preponderance of truth may fairly be held to lie. The following attempt at a less partial treatment of the subject may, even if it should answer no other purpose, be useful as affording a basis for further discussion, and defining more distinctly the real nature of the difficulty to be solved, and the real data which exist for its solution.

In the consideration of this question the most natural method of proceeding, as well as that which

brings under review the arguments on either side in the clearest and most convenient manner, will be to inquire,—what are the reasons which are supposed to render it necessary that death, which, with the approval of the whole community, has ceased to be actually inflicted in this country for any offence except murder, should still be the penalty for that crime; and whether those reasons are sufficient.

It will be found, then, that the maintenance of capital punishment for murder is defended on three distinct grounds, which may be stated as follows:—

1. Scriptural authority;
2. Retributive justice;
3. Superior efficacy.

1. The influence which the appeal to Scriptural authority on this subject has exercised upon the public mind can only be accounted for by that kind of reverence for the sacred writings which is apt to forget that they are to be interpreted with the help of reason and reflection. Assuming that the words of Genesis, "Whoso sheddeth man's blood by man shall his blood be shed," are rightly understood by those who use this argument,*

* This assumption, when the doubts which are not unreasonably expressed as to the real meaning of the passage, and the discrepancies in the various translations of it, are considered, must be admitted to be a liberal one. In the Vulgate, the Septuagint, and some other versions, the words "by man" are omitted, leaving it uncertain whether an injunction to mankind to punish murder with death is intended, or only a prediction in the nature of a warning that the homicide would die a violent death. Even if the translation which inserts "by man" is correct, it is possible, though more difficult, to understand the passage as a prediction rather than a command.

the inference which is drawn from them that the punishment for murder ought in all ages of the world to be death seems wholly unwarrantable. Capital punishments instituted in the Levitical Code for adultery, slave-dealing, assault upon a parent, witchcraft, and other offences, have been abolished without hesitation by modern legislators; and if, therefore, the Levitical Code had been the only portion of Scripture in which the punishment of death for murder had been prescribed, it would of course have been impossible with any consistency to defend the retention of that punishment on the ground of a divine ordinance. Nor is it easy to understand the distinction by which a command given to Moses is supposed to be of transitory, and one addressed to Noah of lasting, obligation. It is held, indeed, that the particular ordinances, as distinct from the moral precepts, of the Levitical Law were, in a special and peculiar manner, abrogated by the Christian dispensation; but if any opinion at all can be formed as to the reason and spirit of that abrogation, it must appear that Christianity, in annulling the penal institutions of the Mosaic æra, annulled also by implication those of the earlier ages of the world.

The inference, however, under consideration is at once seen to be fallacious if it be followed to its logical results. For to maintain that a punishment ordained by divine authority in a particular age is binding upon all ages and under all circumstances is to maintain that it ought to be inflicted even in the very conceivable case of its having become less effectual for the repres-

sion of crime than another punishment would be. It is believed by many persons that in this country a secondary infliction would be more effectual than that of death for the prevention of murder. Yet, according to the doctrine which we are examining, even if this were really the case murder ought still to be punished with death. In other words, of two kinds of punishment, that should be chosen which is at once the most severe and least effectual—a proposition of which (except in the view of those to whom retribution is not only an object, but the main object, of penal legislation) the absurdity is complete. But in truth this reasoning, unanswerable as it seems to be, is only an illustration of the broader ground on which the case against the Scriptural argument may securely rest. Criminal laws, whether human or divine, must be supposed to have been made for the benefit of the human race; and to that object they are unadapted unless they are capable of variation with the varying conditions of social life. To assume, therefore, that the Noachian ordinance, which contains no intimation of its own perpetuity, is binding upon the present generation of men, is to indulge a veneration for the mere letter of Scripture to the disparagement of supreme wisdom and benevolence, and to sacrifice the object and purpose of a divine institution to the institution itself.*

* It seemed scarcely necessary to notice in the text the reference which is sometimes made to Romans xiii. 4, as if it were in favour of the present law. A recommendation to Christians as good citizens to obey an established ruler because "he beareth not the sword in vain," is indeed a slender thread on which to hang an assertion that capital punishment is sanctioned by Scripture. It is

2. The argument from retributive justice can only be insisted on by those who are unacquainted with the true principles of penal law. That a person who commits murder "ought to be hanged,"—that life should be given for life, and blood for blood,—are the phrases by which this argument is commonly expressed, and by which it is intended to signify that the guilt of the murderer is of such an amount that he *deserves* to be hanged, and that, as he deserves to be hanged, it is the business of the State to hang him. Fortunately, the duty of providing for the expiation of moral guilt is not one which has been entrusted to human tribunals. The proper object of punishment is to prevent the commission of acts which are injurious to society, not the exaction from the offender of an amount of suffering proportionate to his delinquency. The greater indeed is the offence—the more morally heinous the crime—the heavier should be the punishment; but this, not because of two offences the greater *deserves* the more severe penalty, but because the greater the injury which has been done to society the stronger should be the deterrent motive which the law interposes to prevent its recurrence. "If we could consider an offence which has been committed as an isolated

impossible by any reasonable rule of interpretation to consider the words "beareth not the sword" as anything but a metaphorical expression for "exercises authority." But even if this were otherwise, and the words were admitted to imply an approval of the possession by the magistrate of the power of life and death, they would still be quite inadequate to the purpose for which they are quoted. They can hardly, for instance, be supposed to show that St. Paul would have approved of capital punishment if its object could be attained by milder means.

fact the like of which could never recur, punishment would be useless:—it would be only adding one evil to another."* The infliction of suffering upon criminals is in itself an evil; and supposing that it could be conceived possible to devise a method of deterring from crime which did not involve the infliction of suffering (as, for instance, by punishments which were apparent and not real), the adoption of such a method, so far from being a subject of regret, would be a great and decided social improvement. The object of punishment would be gained, while the chief "expense" † of punishment—the pain to the criminal—would be avoided.

The answer, then, to the argument from retributive justice is that it is irrelevant to the question at issue:—that question being one of criminal legislation, and retribution being an object with which criminal legislation has no concern.

3. The argument from superior efficacy (as it may be termed) is that on which the more thoughtful advocates of capital punishment mainly rely, and the only defence of their position which is really formidable.

The proposition upon which this argument is founded is that capital punishment is more effectual for the repression of murder than any other punishment would be, or, in other words, that its abolition would occasion an increase in that crime.

We have, therefore, in the first place to inquire into the truth of this proposition.

There are persons of violent, self-indulgent, and

* Bentham. *Principles of Penal Law.* Part ii. B. i. c. 3.
† Bentham.—*Ib.*

reckless character to whom death has few terrors compared with the loss of liberty and enjoyment, or with a life of labour and restraint. But, as regards the generality of human beings, the love of life and the fear of death are influences of such immense power that scarcely anything can come into competition with them as motives of action. Speaking generally, there is no doubt that the expectation of death will operate with far more effect to deter from crime than the same degree of expectation of any other punishment such as would be possible in modern times. Nor can it be denied that what is termed by Bentham the "exemplary" character of this punishment when publicly inflicted must on the whole increase its deterrent force. It is true that a public execution has a hardening and corrupting effect upon the minds of the spectators, and also that the legal destruction of human life has a tendency to weaken the sense of its value entertained by the community at large; and the additional predisposition to crime which is occasioned by both these causes must be set off against the preventive power of the public example. But though these causes may modify, they can hardly be supposed to neutralize that power. Men may jest and jeer and blaspheme in the face of the gallows, and appear, when they are massed together, to derive much amusement from the sight before them; but it is a sight nevertheless which they never forget, and which, in a case where temptation to murder existed, would, supposing that there was a strong probability that the punishment would follow upon the crime, operate with extreme force against its commis-

sion. To cite a few instances of persons who have been induced by witnessing an execution to commit murder is only to illustrate that which needs no illustration—the existence of fantastic and morbid idiosyncrasies.

It may be admitted, therefore, that, if both were enforced with equal rigour, the punishment of death would be more efficacious for the prevention of crime than any secondary punishment such as would be tolerated in this country. But it is urged by the advocates of abolition that the expectation held out to the murderer of his actually undergoing this punishment is so small as to take from it a great part if not the whole of its efficacy, or (which is sufficient for the purposes of the argument) so far to diminish its deterrent force that a secondary punishment would be equally or more effectual.* This is the real meaning of those who insist so strongly on the "uncertainty" of capital punishment as a reason for its discontinuance; and we have now, therefore, to examine into the truth of their assertion, and for this purpose to inquire—what is the degree of expectation set before the murderer that he will suffer death, as com-

* There can be no doubt that this was actually the case as regards those minor offences for which capital punishment is now no longer inflicted. The fact, therefore, which is often referred to as if it were conclusive, that this punishment has been abolished as regards such offences without any consequent increase of crime does not in itself afford a valid argument in favour of its abolition in the case of murder. For it will be at once replied that this fact is accounted for by the high degree of probability which was offered to the perpetrators of these offences of escaping death,—much higher (it will be contended) than that which exists for the murderer.

pared with that of other offenders that they will undergo the particular penal inflictions assigned to their offences? An answer to this question sufficiently approximating to the truth may be obtained from the published official Returns.* We find that in the six years 1857-1862, 396 persons were committed for trial for murder in England and Wales, and that of these 126 were convicted and sentenced to death, and 76 were executed. Hence it appears that the proportion of committals to convictions for murder is about 3 to 1,—that of convictions to executions about 12 to 7,—and that of committals to executions about 5 to 1. Comparing with this the prospect of escape from other punishments, we find that in the same six years the total number of persons committed or bailed for offences other than murder was 108,728, and of persons convicted and sentenced for such offences 82,132; while the number of such persons upon whom, though convicted and sentenced, the sentence was not carried into effect, is not stated in the returns, and is certainly so small as to be of no importance in the argument. The total number, therefore, of committals for these last-named offences was to the total number of punishments for them as (speaking approximately) 4 to 3. We have here, then, a proportion between committals and punishments of, in the case of murder, 5 to 1 (*i.e.* 15 to 3), and in the case of other offences of 4 to 3. That is to say: on the part of a person committed for trial the degree of

* *Judicial Statistics*, presented annually to both Houses of Parliament.

expectation of a secondary punishment is to the degree of expectation of the punishment of death as 15 to 4, or $3\frac{3}{4}$ to 1.*

Assuming that the proportions of committals to actual crimes is not materially different in the two cases,† this result may be taken as indicating sufficiently for the present purpose the degree of expectation which is offered to criminals of capital, as compared with secondary, punishment. And this expectation being such as has been shown, it can hardly be doubted that, if the alternative presented to the murderer were absolute impunity, or in other words, supposing that in the actual state of the case by escaping death he escaped punishment altogether, some kind of secondary infliction is possible which would be at least as efficacious as that of death for the prevention of the crime. The increase in the expectation of the punishment would, on that supposition, be so great as in all probability fully to compensate for its inferior severity. But the actual state

* It may be said that the comparison would be fairer if it were made as between the case of murder and that of the crime the penalty for which is next in order of severity. If, then, the crime of manslaughter be taken, it will be found that the proportion of committals to sentences (the punishment being, it is presumed, in almost all cases the same as the sentence) is about 2 to 1.

† There seems no sufficient reason to doubt this. The general eagerness, caused by the sense of personal insecurity, to detect a murderer might seem likely to render the proportion of committals to crimes greater in the case of murder than in that of other offences; but against this is to be set the frequent reluctance not only of those connected with the criminal but of other persons to give evidence or adopt any other measures which may possibly lead to his death.

of the case is not that supposed. Instances in which murderers escape execution owing to the reluctance of juries and of the government to enforce the law are indeed extremely frequent. But of those who are reprieved by the Secretary of State a large proportion are punished in some other manner, usually by penal servitude for life. Of those, again, whose lives are preserved by the humanity of juries there are many who are found guilty of manslaughter, and sent to penal servitude for life or of long duration. Those murderers who go altogether unpunished for the most part belong to that class whose crime cannot by any ingenuity be construed into manslaughter, or who can with any pretence of reason be treated as insane. Thus the actual position of a detected murderer, as regards the prospect of punishment, is as follows. There is a possibility, the value of which it has been attempted to estimate, that he will be executed: if he escape execution, there is a probability that he will be consigned to penal servitude for life: and there is a not inconsiderable chance that his crime may be followed by entire impunity.*

Such being the nature and amount of the deterrent motive which is now offered by the law as against the crime of murder, the question is whether a secondary punishment is not possible which would supply a de-

* Which of these contingencies is most probable in each particular case, will, of course, depend in a great measure on the nature of the crime: but it is with the *average* expectation of punishment that we are here concerned.

terrent motive of equal or greater strength. Suppose, for instance, that penal servitude for life, not as at present practically remissable after a certain term of years, but from which under no circumstances or conditions would it be possible to obtain release,* and increased in severity and impressiveness by various expedients, as for instance by additional seclusion and additional labour, were in future to be the penalty for murder. The consequence would be that murderers who under the present system would be executed, as well as those who are now, owing to the general reluctance to inflict death, sent to penal servitude for life or for a long period, and those who for the same reason escape altogether, would in future be punished with the new and aggravated form of penal servitude. The *loss*, therefore, of deterrent force would consist in the substitution of a milder punishment for that of death as regards those murderers who would now be executed, and who, it has been seen, are comparatively few. The *gain* in the same respect would consist in the increased severity of the suffering which would be undergone by those murderers who are now, from motives of humanity, condemned to penal servitude, and in the extinction of the possibility which from the same cause at present exists of complete impunity. To put the case somewhat differently—instead of a chance of being put to death so small that there is only one

* There is no reason to suppose that in the case of murder, as distinct from other crimes, public feeling would oppose any obstacle to the enforcement in this respect of the extreme rigour of the law.

execution to five committals, and an expectation either of complete impunity or of a punishment no more severe than that awarded to manslaughter, there would be set before the detected murderer something like a certainty of as heavy a punishment short of death as could be inflicted consistently with the recognised rules of humanity. It seems very questionable, therefore, whether, in point of efficacy, the gain on the side of the new law would not at least counterbalance the loss, or, in other words, far from improbable that its effect might be, if not to diminish, at all events not to increase, crime. This, however, may, it would appear, be confidently looked upon as in the highest degree probable,—that any sacrifice of preventive power which the measure might involve would not be large. Very possibly no increase whatever, or even a diminution, of crime—in all probability no great or alarming increase of it,—would be the result of the change.

It is as a *prima facie* confirmation, not as a positive proof, of the soundness of this conclusion, that the non-existence of capital punishment in certain foreign countries,* which is so frequently appealed to by the advocates of abolition, is really valuable. The fact that in those countries capital punishment has either been abolished or never obtained, and that, as it would seem, there is now no idea of resorting to it, proves no more than this: that in them there has been no such increase in the crime of murder as to suggest the

* These countries are (as it would appear) Russia, one or two of the Cantons of Switzerland, and the following States of the Union: —Louisiana, Michigan, Illinois, and Wisconsin.

expediency of punishing it with death. It does not prove, as it is often hastily assumed to prove, that secondary punishments are there more effectual than that of death for the prevention of murder, or even that they are not in any degree less effectual for that purpose. If the necessary statistics on the subject could be obtained, it might probably be found that in those countries in which capital punishment has been discontinued murders have not become more common since its abolition, and that in those in which it has never existed such crimes are not more frequent in proportion to population than elsewhere. But even if this were proved to be the case, the discovery would not be of such importance to the argument as might at first sight appear. In the first place, such information would be extremely inconclusive as regards any nation by which capital punishment had been so long abolished as that important social changes may have since occurred. In such a case, the fact that murders had even decreased in number since death had ceased to be the penalty for them would afford no satisfactory evidence as to the effect of the abolition, unless it could be shown that the lapse of time had brought with it no such social improvement as would be likely to diminish crime. But, further, however valuable the information might be as a test of the effect of dispensing with capital punishment in any particular country, it would still be inconclusive as regards the present question. For that question relates to the comparative efficacy in *this country* of capital as compared with secondary punishment. But the degree of efficacy of a penal law

depends very materially upon the state of public opinion with regard to it as influencing those upon whom the execution of the law depends. The fact, therefore, that secondary punishment was in one country as effectual as capital punishment to prevent murder would not prove that it would be so in another, unless it could be shown that public feeling on the subject was not materially different in the two countries. It might be found, for instance, that in a particular state of the Union murders had not become more numerous since the disuse of capital punishment. But the reason of this might be that, owing to the condition of public feeling in that State, it was, previous to the abolition, absolutely impossible to enforce the law;—and it could not therefore logically be inferred that the result would be the same in England where death is, though reluctantly, frequently inflicted. There can, however, be no question but that the absence of capital punishment from the penal code of these states without any marked ill effect upon social security affords an important presumption, though not a conclusive evidence, that the same course might be followed with a similar result by other nations; and thus far, therefore, it corroborates the conclusion at which we have arrived, in regard to the effect which a change in the law such as that supposed might be expected to produce on the amount of crime in this country.

The result, then, of the inquiry respecting the comparative efficacy of capital punishment being such as has been indicated,—and such, therefore, being the value of the objection, on the ground of superior

efficacy, taken to its abolition,—it becomes matter for serious question whether that objection is not more than counterbalanced by the peculiar evils which, apart from all consideration of its effect upon crime, are incidental to this mode of punishment.

It is necessary, therefore, to consider, in the next place, what is the nature and extent of those evils.

a. While all punishment is in itself an evil,* that which consists in the destruction of human life appears to be an evil distinct in kind as well as paramount in degree. It is not only the most severe of all modern punishments; it is also totally different in its nature from the rest. To deprive a man of liberty or of property, or to inflict upon him physical suffering in whatever form, is one thing—to put an end to his life is quite another. The assertion that society has no right under any circumstances to take human life is an assertion which, if it were true, would of course be at once decisive of the question at issue, and the unsoundness of which is a postulate upon which our whole argument proceeds. But the very existence of such an opinion is an evidence of the totally distinct character of the injury involved in this mode of punishment. Moral instinct and religious precept alike proclaim that a man's life is his own in another and more sacred sense than anything else which he possesses. The very horror of murder which so largely contributes to the maintenance of capital punishment is an evidence that such an instinct exists; and those who would deny its existence and repudiate its obliga-

* See *ante*, p. 80.

tion cannot advocate the continuance of the punishment on account of the enormity of the offence. They must either admit the pre-eminent and peculiar importance of human life, or they must modify their estimate of the murderer. They may profess to see no fearfulness in the penalty, but they cannot at the same time enlarge upon that of the crime.

The doctrine of the sacredness of human life may not be proof against casuistry, but it is one which has advanced *pari passu* with the progress of mankind from barbarism to civilization, and which has received special sanction and illustration from the Christian religion. Whether or not it be necessary to hang for murder, it would be an evil day for a nation when the necessity should have come to be considered as other than a terrible one. Fortunately we are as yet in no danger of such a retrogression; and however inconclusive the objection to capital punishment here insisted on may appear to be, its reality and importance would probably be admitted by a very large proportion of enlightened public opinion in this country.

b. Capital punishment differs from all others in that it is absolutely irremissible and irreparable. It is an evil attending upon all penal inflictions that though there may be a strong probability there can be no perfect security that they will fall only upon the guilty. But in the case of a person undergoing a secondary punishment and discovered to be innocent the sentence may be so far at least reversed as that the penal process, if incomplete, may be discontinued;

and there is also the possibility of making compensation for that part of it which has already been suffered. Where the punishment is death, not only is the injury which has been inflicted far greater, but it is one which can neither be diminished nor repaired. The appalling injustice unintentionally committed of destroying an innocent person admits neither of retractation nor redress. If the administrators of the law were exempt from liability to error, the power to cause the death of a rational being would be a power which they might well shrink from exercising; in a fallible tribunal the awfulness of the capacity to take human life is increased a hundredfold by the inability to restore it.

It will probably be contended that this objection to capital punishment has ceased to be of any practical importance, since, in the present state of public feeling on the subject, there is a moral certainty that none but those who are really guilty will be executed. Unfortunately this position cannot be sustained. It is true that, owing to the reluctance which exists to enforce the law, very convincing testimony is generally required before the guilt of the accused is considered as substantiated. But the evidence on which convictions for murder are founded is, from the necessity of the case, ordinarily of that kind which is termed "circumstantial," or, in other words, it is such as to imply an appreciable, indeed a not inconsiderable, possibility that the convict may be innocent. Ocular evidence—the concurrent testimony of two or more witnesses of the criminal act,—is conclusive in the

first, "circumstantial evidence" only in the second degree. In a late trial for murder the Lord Chief Baron instructed the jury that the possibility that the most important circumstances adduced against the prisoner might be explained in a manner compatible with the supposition of his innocence was not sufficient to justify an acquittal, and that they must decide the case upon "that degree of conviction, that firm persuasion upon which people would act in their own important concerns." It is obvious that this rule of law allows of a small but decided margin for the contingency of a mistaken verdict. The firm persuasion upon which people act in their own important concerns occasionally turns out to have been erroneous. The reluctance of juries to convict will indeed lead them to give to this rule a construction as favourable as it will bear to the interests of the prisoner; but it is nevertheless the rule upon which, as directed from the Bench, they act in most instances with more or less rigour; and it is evident that in every trial for murder a possibility thus arises of the sacrifice of innocent life which is far from being so small as to be unworthy of consideration, and which, when occurring in a sufficiently large number of cases, must become a certainty. There is no need to inquire into the reality of the instances actually cited of these fatal and fearful mistakes. It is but too certain not only that they have been, but that they will continue to be, so long as capital punishment endures, rarely indeed yet from time to time committed.

c. The existence of a criminal law, on a subject of

the utmost social importance, which is enforced in comparatively few instances and in the rest is deliberately dispensed with by those who are responsible for its execution, is in itself a great and obvious evil. That crimes to which the law has assigned the character of murder should either be left unpunished or treated as manslaughter by the established tribunals, or that when the verdict has been murder, and the sentence death, the culprit should again and again be dealt with by the Executive as if the verdict had been homicide and the sentence penal servitude, is a signal defect in our penal system, and in violent contradiction to the spirit of our institutions. Not only do absolute acquittals, in the face of evidence which would be quite sufficient to ensure a conviction for any offence except that of murder, frequently occur, but it is only where the crime is such as that by no possibility could it be looked upon as manslaughter that juries can (speaking generally) be induced to convict. In cases where there is any pretence whatever for a verdict of manslaughter such a verdict is almost sure to be delivered, however clearly it may appear on the ordinary principles of evidence that the crime is murder in the sight of the law. Where, again, the accused has been convicted and sentenced to death it has been shown that the chances are 5 to 7 that the sentence will be commuted on the advice of the Secretary of State. Thus the practice in this country really is, not to punish with death criminals who are murderers in the sight of the law, but to select a few of such criminals for execution;

and the fate of a murderer depends not on any fixed rule of penal legislation, but on the idiosyncrasy of a jury or of a Minister of the Crown. It is true that no murderer is executed unless he has been convicted and sentenced according to law, and that the security of society is so far regarded as that those who suffer are commonly the worst offenders; but it is also true, that the majority of murderers who escape with life are, in the view of the law, equally criminal with the minority who are executed. The injustice of such a system is sufficiently evident. The justification for executing a murderer is, not that he is worse than other murderers, but that he has committed an offence to which the law awards the penalty of death; and if, in the estimate of the law, his crime is the same as that of others, that he should suffer while they escape is a palpable and grievous wrong. He has every right to claim the same immunity as is extended to those who are, legally speaking, no less guilty than himself. The truth of this, as a general proposition, is in no way incompatible with the exercise by the Executive Government of a dispensing power which is in its true spirit and essence of exceptional application. That, owing to the general aversion to capital punishment, this power should have been so far distorted from its proper character as to have become an instrument by which the law is habitually rendered nugatory, is the worst part of the evil here insisted on. The grounds, however inadequate, upon which a jury in the face of the clearest evidence refuses to convict a murderer are, at least, publicly known, and they usually imply that his crime has not

been among the very worst of its class:—the tribunal by which the question of life or death is ultimately decided is secret and irresponsible, and affords no means of judging whether its decisions have been founded on any just estimate of comparative criminality. This last consideration has, indeed, forced itself of late in a very marked manner upon the public mind, and appears likely to be the cause of continually increasing uneasiness and mistrust.

d. That a punishment should be variable, *i.e.* that it should be capable of mitigation or increase according to the varying degrees of guilt in the particular class of offences to which it is applied, is one of the most elementary maxims of criminal jurisprudence. Capital punishment, and that alone, directly violates this rule. In theory, the half-distracted girl who to save herself from shame and her infant from starvation secretly destroys it, and the ruffian who has been in the habit of poisoning any relations and friends who might happen to stand in the way of his selfish schemes, are confounded in one and the same fatal doom. In practice, this system is rendered less glaringly vicious by that process of evasion the objections to which have just been noticed, and under which the least criminal of those who are guilty of murder usually escape death and are punished as for other crimes. But this mode of proceeding, objectionable as it is on other grounds, is only an imperfect remedy for the evil under consideration. The murders for which juries are willing to convict and the Secretary of State to confirm the sentence are still so various in point of

moral guilt that to punish them all in the same degree is inconsistent with any intelligible notion of justice. For the destruction of life in a fit of uncontrollable passion, or from revenge for a flagrant wrong, the same tremendous penalty is exacted as for a deliberate, cold-blooded assassination for the sake of gain,—as for the calculating murder of a husband or a wife, a parent or a friend. Whether or not this is a necessary evil is not here the question. It is certainly a serious one, and it is also one which would cease to exist if a secondary punishment were substituted for that of death. Penal servitude, without hope of escape as long as life should last, would probably be the penalty which in the event of such substitution would be assigned to every crime which was murder before the law; but the incidents of such a punishment, as for example the amount of solitary confinement or of severe labour to be undergone, might easily be varied so as to correspond with different degrees of guilt, and without risk of obliterating the broad line of demarcation which would still separate the fate of the murderer from that of all other offenders.

e. To the criminal who undergoes a secondary punishment time is allowed in which to reflect upon and arrive at a right estimate of his offence, and to show, as far as is possible, by his conduct that he has done so. To the murderer—the worst of criminals—no such opportunity is afforded. The hours which intervene between the dock and the gallows are marked by feverish alternations of hope and despair. Remorse may find a place in many such intervals—penitence in

few. The crime which by society and by the law is considered the gravest of all is also that of which the perpetrator is denied any chance but the faintest of that genuine repentance which, except in rare instances, implies the full possession of the faculties, and without time for thought and scope for action can seldom be attained. The necessity must indeed be serious and urgent which can warrant such a deprivation. The "expense"* of a punishment which makes reformation impossible is, it must be admitted, formidable in the extreme.

f. It is not likely that in England executions will ever take place otherwise than in public. It seems more probable indeed, so far as this country is concerned, that capital punishment will be discontinued altogether than that it will ever be inflicted except in the full face of day. There is that in our national character to which secret executions are peculiarly abhorrent; and as it does not appear that there is any such very decisive preponderance of sound argument in their favour as might be expected gradually to overcome a popular prejudice, it cannot reasonably be anticipated that they will ever find a place in our penal system.

Such being the case, we are entitled, in an inquiry which relates to the criminal legislation of this country, to treat the publicity of executions as a necessary incident of capital punishment. And this publicity, while on the whole (as has been before observed) it must be considered as adding to the deterrent power of the infliction, adds also enormously to the amount

* See *ante*, p. 80.

of objection which may be offered to it. It may well be doubted whether any right-minded man, unless actuated by some notion of social duty, would ever attend these exhibitions. By far the greater number of those who witness them do so for the purpose of gratifying some kind of vicious inclination; and it is needless therefore to say that they are those who occupy the lowest place in the moral scale. The least objectionable of these propensities is a morbid appetite for that sort of excitement which proceeds from a contemplation of the painful and the horrible. The desire of vengeance —the thirst for blood—the delight in human suffering —the mere abstract love of evil—are among the other inducements which bring men, women, and children from their beds to shiver for hours at the foot of the gallows. It is not necessary here to describe scenes which have been so often dwelt upon, and of the character of which there can be but one opinion. The outrage upon society—the opportunity and incitement which are given to the most degraded characters to insult and domineer over the sense of decency and right in the better portion of the community,—are not the worst of the mischiefs which they involve. Compassion for the criminal combined with detestation of his crime;—grief, not unmixed with horror, at the stern necessity of taking from him that which man can neither give nor restore—the mysterious and sacred gift of life;—a quiet and serious demeanour;—sorrowful, anxious, and reverent thoughts:—these should be the accompaniments of an execution. Execration and derision;—oaths, taunts, jeers, and sarcasms,

levelled indiscriminately at the culprit, the hangman, the clergyman, and the ghastly apparatus of death ;—blasphemy, ribaldry, cruel exultation, impious mockery, drunken and hideous revelry ;—these are its actual retinue. It is not easy to over-estimate the amount of demoralisation which must ensue from such an event so treated. The behaviour of the assembled multitude is not only frightful in itself ; it is precisely the opposite of that which reason and morality prescribe for the occasion ; and thus a double offence is committed by, and a double moral injury done to, the spectators. It is needless, however, further to enlarge upon this part of the subject. An evil which in the United States has led to the adoption of a system so repugnant to the spirit of free institutions as that of private execution, and which in this country caused the appointment of a committee of the House of Lords to consider the expediency of a similar course, cannot be said to be unrecognised, or to be treated as of less than great and primary importance.

Such appear to be the principal objections to which the punishment of death, considered without reference to the question of its efficacy, is liable, and from which secondary punishments are free.

It does not appear that these objections are to a material or even appreciable extent counterbalanced by any advantage exclusively belonging to that punishment so considered.* According to a common opinion,

* The advantage ascribed to Capital Punishment on the ground that it absolutely prevents a repetition by the criminal of the crime for which he suffers could only exist if (as is sometimes asserted)

one such advantage is that death, whatever positive suffering it may cause to the murderer, is, relatively speaking, no injury at all to him, since the alternative, life, would be intolerable from the effect of a remorseful conscience. It is to be observed, however, that, speaking generally, a very different view of the case is taken by the criminal himself. Condemned murderers may indeed occasionally be found upon whose consciences their crime sits so heavily that the prospect of death is more or less welcome to them. But, in general, such persons exhibit an intense and eager desire to preserve their lives which could not easily be surpassed. Moreover, experience seems to prove that in a minority of cases only can it be said that remorse is so intolerable as to make life a heavier penalty than death. There is no reason to suppose, so far as most criminals are concerned, that an existence passed in penal servitude, however painful and irksome it may be, is free from all sources of consolation, or so unendurable as that death would be a relief.

The fact noticed by Bentham* that while the apparent severity of capital punishment is greater, its real

sentences of penal servitude ending only with life could not be literally executed. But even were the existence of this advantage admitted, it would be no very great, still less of any conclusive, importance, as against the weight of aggregate objection.

* *Principles of Penal Law*, B. ii. c. 12. "Capital Punishment examined."

It must not be forgotten that Bentham, the great value of whose authority on this question is enhanced by the fact that he wrote in an age when many offences besides murder were punished with death, has given his opinion against capital punishment even for that crime.

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severity, if only the actual pain inflicted upon the criminal be regarded, is less than that of others, might also appear to be an advantage of the kind referred to. But, as Bentham himself observes, it is in the apprehension of death, and not in the actual experience of it, that the greater part of the misery endured by the criminal consists; and those who reflect on the terrific agony of the last few days of a forfeited life will not be disposed to deny that even on the score of direct and positive suffering this punishment has no equal in the penal code of civilized nations.

Having thus obtained an answer to each of the questions which it became necessary to consider, viz.: first, as to the degree of comparative efficacy, and secondly, as to the amount of comparative evil, we are now in a position to strike the balance between these results, and to decide whether there is any such superiority in point of efficacy on the side of capital punishment as to countervail its peculiar disadvantages. Nor can the decision be a matter of any difficulty. It has been seen on the one hand that, while there is no certainty that a secondary infliction might not be substituted in this country for that of death without any loss whatever, or even with a considerable gain, of deterrent force, there is every probability that any such loss, if it were really incurred, would not be great; and, on the other, it cannot be denied that the evils which have been indicated as exclusively characteristic of capital punishment, and which are not balanced by any advantage of importance exclusively belonging to it, are in the aggregate of immense magnitude. These

two considerations, taken together, appear to be conclusive as against the retention of this punishment on our penal code.

It appears, then, that of the three grounds on which capital punishment for murder is defended two are are entirely untenable; while on the third, which is that on which only there is room for serious or lengthened discussion, the balance is in favour of the advocates of change. Those to whom the process by which a conclusion opposed to the penal destruction of life has thus been arrived at is unsatisfactory will, it is hoped, admit that the question has at least been presented in such a form as that the precise link in the chain of reasoning which is supposed to be defective may easily be pointed out, and the precise bearing upon the general issue of any error which has been committed readily perceived. But, if the argument is unsound, let it be confuted. The subject is one of serious and terrible moment; and indifference or inaction with regard to it on the part of those who possess any means of influencing public opinion is only to be justified by a carefully-informed conviction that the system which sends murderers to the gallows will satisfy the most searching test of philosophical examination.

Since the first publication (in 1861) of the preceding observations, the subject has been referred to the consideration of a Royal Commission. In their Report the Commissioners state that they are unable to agree upon the answer to be given to the question whether or not the punishment of death should be altogether

abolished; but they are unanimously of opinion that there are only two kinds of murder for which it ought to be inflicted, viz.:

1. Murder committed "with express malice aforethought, such murder to be found as a fact by the jury."

2. Murder committed with a view to the perpetration, or escape after the perpetration, or attempt at perpetration, of "murder, arson, rape, burglary, robbery, or piracy."

They also advise the discontinuance of public executions.

It is obvious that a very considerable concession has thus been made to the advocates of abolition. A report which recommends that death should no longer be the punishment for a large class of the crimes to which it has hitherto been assigned, and refrains from expressing an opinion as to the expediency of retaining it for the remainder, is favourable in a very important degree to the views of those who are opposed to the infliction in any case of such a punishment.

There are many persons to whom it will appear that no further alteration in the law is required than that which is proposed in the Report, and by whom, thus restricted, it will cease to be considered objectionable. Nor can it be doubted that by such a change the case against capital punishment, as operative in this country, would be diminished in force. Whether it would be so far weakened as no longer to be conclusive,—whether, supposing the change to be made, and some of the evils attendant upon capital punishment thereby removed, there still remains reasonable ground for the

preference of a secondary infliction,—is another question, and one which we have now to consider.

The argument from which it has appeared to follow that capital punishment ought to cease altogether is in effect this:—that such a mode of punishment (considered without reference to its effect upon crime) is open to certain serious objections from which secondary punishment is exempt; and therefore that, unless it can be shown to be greatly superior in point of deterrent effect to secondary punishment, secondary punishment ought to be preferred. In other words, it is a question of comparative objection on the one hand, and comparative efficacy on the other. To what extent, then, would (1) the comparative objection, and (2) the comparative efficacy be affected by the proposed change?

The peculiar grounds of objection to capital punishment may be shortly expressed as follows:—(1) Sacredness of human life; (2) irreparability; (3) frequent non-enforcement of the law, and excessive use by the Executive of its dispensing power, to the discredit of public justice; (4) invariability; (5) impossibility of reformation; (6) scandal of public executions. Of these the third, fourth, and sixth are those upon which any effect would be produced by the adoption of the recommendations in the Report.

The third objection—the frequent non-enforcement of the law—would, it is evident, to a certain extent be met by a change which would confine the punishment of death to those murders which are looked upon with the greatest aversion, and for which juries would therefore be less unwilling to convict, and the Home Office

less frequently induced, by the pressure of public opinion, to commute the sentence. But, though mitigated, the evil would by no means be removed. It is not only with respect to charges of unpremeditated murder that a reluctance on the part of juries to convict is observable, or that the Home Office is impelled, by the persistent efforts of humane persons, to substitute penal servitude for death. In recent trials especially, the disposition of juries to acquit in the face of the clearest testimony, and of the public to interpose to protect from execution, murderers whose crimes have been committed with the utmost deliberation, has been conspicuously displayed.

The fourth objection to the existing law—that it inflicts a penalty invariable in degree for crimes which involve very various degrees of moral guilt,—would necessarily be diminished in force by a change which would in future exempt from that law a large class of crimes now subject to it and involving a minor degree of guilt. But, in practice, the course proposed by the Commissioners would not effect any very important alteration in this respect. Practically (as has been already shown), owing to the general disinclination to enforce the law, few of the crimes which legally are murder but partake of the nature of manslaughter, and which would no longer be punished with death if the recommendations of the Commissioners were adopted, are now so punished; and the charge of an invariability inconsistent with sound principles of legislation can be sustained, irrespectively of those crimes, against the punishment of death. A law which

would award the same penalty to a murder prompted by revenge for some flagrant and serious wrong as to the murder of a parent or a friend for the sake of pecuniary gain, provided only that both crimes were deliberate, could claim no immunity from such a charge.

The sixth objection would be entirely removed if recourse were had, as proposed by the Commissioners, to private executions: but, as before remarked, it seems improbable that the system of private executions will ever be resorted to in this country.

It appears, then, that of the objections peculiar to capital punishment two would be considerably diminished in force, but would not be obviated, by the legislation which the Commissioners propose, and that one only would be actually removed; the particular proposal by which its removal would be effected being a proposal of which it would be sanguine to anticipate the adoption.

On the other hand, the efficacy of capital punishment, limited in its application as advised by the Commissioners, would undoubtedly be to some extent increased. The present inefficacy of that punishment is mainly owing to the state of public opinion upon the subject, and to the consequent reluctance of the authorities, legal and executive, to enforce it: and in the case of the crimes to which the Commissioners desire in future to confine its operation, that reluctance would be less active in so far that these crimes, being deliberate, are therefore more heinous. But, as already observed, it is not only in respect of

murders which are committed without deliberation that the general aversion to the punishment of death prevents its enforcement. From the legal penalty for crimes which, if committed at all, must have been premeditated, it is found that the criminal has now a chance of escape far greater than that which would be open to him if a secondary punishment were the consequence of conviction. Evidence which in that case would at once be decisive is jealously sifted or simply discredited when the life of a human being depends upon its invalidity. It is seldom that a jury will convict on charges of murder however deliberate, or that the public will abstain from making an effort to save the life of the criminal after sentence, unless the evidence of guilt has been far more than ordinarily conclusive. In other words, the causes which impair the efficiency of capital punishment as a preventive of the class of crimes to which it is at present applied would, though reduced in force, remain powerfully operative even in the event of the contemplated amendment of the law.

The question then is, Would the efficacy of capital punishment, limited in the manner which the Commissioners propose, be so far superior to that of secondary punishment for the same crimes as to compensate for the peculiar evils which, even when thus restricted, it would involve? We have just seen that against that fear of death which is undoubtedly the strongest deterrent there would still have to be set a very great though diminished amount of comparative uncertainty in its infliction. The superiority, therefore, of capital punish-

ment in point of efficacy would remain doubtful, and might possibly have no existence; while the objections which exclusively belong to it would still be extremely strong,—so strong that, even supposing the superiority to exist, and to be considerable, the objections might fairly be held to overbalance it. Looking to the aggregate force of those objections, it might reasonably be contended that even if capital punishment as inflicted under the new law were decidedly the more powerful deterrent, it would not be so much more powerful in that respect as that it ought to be retained. Such a punishment might well be considered too great a price to pay even for an important gain in regard to the prevention of crime. There are indeed many persons who would be ready to sacrifice almost any amount of deterrent force rather than maintain a penal law which appears to them so unworthy of a civilized age. In the general opinion, this view of the subject proceeds upon an exaggerated estimate of the character of the infliction; but, on the other hand, there is no such inferiority on the side of secondary punishment in point of repressive power as that which it supposes. It seems very doubtful whether the destruction of life, even for deliberate murders only, would afford any greater security against crime than a less questionable penalty, and certain that it would afford no such additional security in that respect as to compensate for the serious and formidable evils by which it is attended and from which secondary punishment is free.

THE BANK CHARTER ACT OF 1844.

THAT men should be allowed to trade with each other on whatever terms and to whatever extent they please, and that no commercial transaction ought to be prohibited or restricted on the ground that it may be so carried on as to inflict loss upon those concerned in it, is a general rule of political science the disregard of which has wrought in its time incalculable evil, but which during the last twenty years has been sufficiently recognised in this country. It is now generally understood, in England at least, that the proper remedy for the evils occasioned by the breach of commercial engagements is not to prevent or limit them, but to pass such laws as may be most expedient in case they are unfulfilled. The interference of the State with respect to the metallic currency of the country can scarcely be considered as an exception to this rule. It is an interference, not to prevent or limit the particular kind of commercial transaction to which it applies, but in order that the transaction may be really what it professes to be. It imposes no limitation or condition whatever upon the use of metallic money, except that of manufacture by the State. It is an

exception, based on considerations of peculiar cogency, to the maxim "caveat emptor," rather than to the principle of free-trade. The only direct and positive instance, of any great and general interest, in which the rule is now set aside is that which is afforded by the monetary legislation of 1844.

It must be confessed that this legislation (which, applicable in the first instance only to England, was extended in the following year to Scotland and Ireland) is as vigorous as it is singular. The original intention appears to have been to permit the issue of notes, under severe restrictions, by the Bank of England alone. As it was, the Bank of England was prohibited from issuing notes to an amount exceeding 14,000,000*l.* beyond that of the coin or bullion in its coffers, except in so far as they were substituted for those of any country bank which were no longer in circulation, of which substitution (limited to two-thirds of the lapsed issue) the whole profit was to be made over to the State; and no such issue was permitted at all except upon securities, of which the debt due to the Bank by Government (11,000,000*l.*) was to form a part. The issue of notes other than those of the banks of issue then existing was made illegal; and, except the Bank of England, no bank was to increase its circulation beyond the amount at which it then stood. Power was taken by the Government to deprive any bank of the privilege of issue; a maximum of six was fixed beyond which no addition to the number of partners in any private bank possessing that privilege could take place; and other vexatious restrictions were

imposed—the intention evidently being that the whole paper circulation of the country should ultimately be in the hands of the Bank of England. Thus a monoply of issue was given to certain banks, not one of which, except the Bank of England, could be supposed to have even the shadow of a claim to such treatment; and it was in effect enacted that no bank except those so favoured, however great might be its wealth and however admirable its management, should in future be allowed to issue notes. Thus also it was provided that, whatever might be the increase in the wealth and metallic circulation of the country, there could be no increase at all in the note circulation of country banks, and no increase in that of the Bank of England unless with a corresponding decrease of the proportion borne by the amount of notes which it might issue to that of its metallic reserve. Two distinct and formidable weapons—monopoly and restriction—were brought into play against a most important branch of commercial business by a Minister who, it is as well to remember, was not yet converted to free-trade. And, when to this statement of the effect of the Act it is added that on two out of the three occasions of serious commercial difficulty which have occurred since it was passed the Act was suspended on the unanimous demand of the trading classes, few will be found to deny that a *prima facie* case of singular force has been established against it. The measure was not only a departure from an economic principle of admitted soundness and extreme importance, but a very wide and evident departure

from that principle; and it has been found intolerable in the very circumstances with a view to which it was adopted. Right or wrong, a heavy burden of proof unquestionably rests upon its supporters.

Now, what are the grounds upon which an enactment so extraordinary and exceptional was proposed and is defended? Two principal reasons were given for it by the more moderate and judicious of its advocates, one of which may be summarily dismissed. This was, that the calamity commonly known as a "commercial crisis" is seriously aggravated by the stimulus given to the undue speculation which is a frequent cause of such a phenomenon, as well as to the "drain of gold," which usually accompanies it, by the unrestricted issue of bank-notes. It is obvious that this statement, whatever amount of truth it may contain, affords no ground whatever for a measure such as that under consideration. It will hardly now be contended that the evils, however great, which mercantile insolvency inflicts upon the country are of a kind to justify an exceptional violation of the great law of unrestricted trade. The time is gone by for preventing commercial enterprise from becoming ruinous by legislative limitation of the means employed for carrying it on. If the object was to prevent or mitigate commercial failures, there could be no better justification for restricting the amount of notes than there is for restricting the amount of bills of exchange or other mercantile obligations,—a course which no one has ever been bold enough to propose. The more plausible ground upon which banks were subjected to the legislation of 1844 was of

a different kind. It was represented by the authors of the measure that on several occasions, when the country had been suffering from monetary derangement, the proportion between the notes issued and the cash held by bankers had become such as to endanger, and in the case of many country banks actually to destroy the convertibility of the note, causing great and wide-spread disaster; and that the importance of averting for the future any danger of the kind was such as required a resort to extraordinary and special legislation.* Another effect which is very commonly attributed to and held to justify the measure does not require any serious consideration. It is supposed by many persons that the Act, by limiting the circulation of notes, prevents their being issued (as it is termed) "in excess," that is, to such an amount as to induce more or less depreciation and consequent disaster. The fallacy of this supposition has been sufficiently shown. It is now well understood that the depreciation of a convertible paper currency, so long as its convertibility is maintained, is impossible; since on the very first symptom of such depreciation it becomes profitable to exchange the notes for gold. So long as the notes are duly cashed when presented for payment, there can be no fall in their value such as that supposed; and the only discredit to which they can be liable is of that

* A third reason for the Act, of the same character as the first and therefore inadmissible, was given by Sir Robert Peel in his speech of December, 1847, on Commercial Distress, viz. the expectation that the Act would prevent "by early and gradual, severe and sudden contraction;" but he mentioned it only to admit that the expectation had been disappointed.

complete and final kind which follows the refusal of their issuers to convert them.

Thus in discussing the expediency of the Bank Charter Act we shall be warranted in assuming that the evil which it is intended to avert, and as a remedy for which it can alone with any show of reason be defended, is simply a recurrence in times of serious commercial difficulty of that danger to the convertibility of the note by which such periods are considered to have been characterized. Nor can it be denied that the evil thus apprehended has peculiar features which afford, if not a perfectly satisfactory, at least a plausible ground for treating it as an exception to general principle. The disasters caused by the failure of mercantile credit and the depreciation of mercantile paper are serious enough. Probably indeed they involve an actual loss of property quite as great as any which is occasioned by the insolvency of banks of issue. But the loss in such cases is confined to comparatively few persons, all of whom have or may be supposed to have some special opportunity of judging as to the trustworthiness of the paper on which they have relied. The ruin consequent on the inability of banks to cash their notes is spread over a much wider area, runs through all the complicated transactions of trade, and affects a class of persons who have practically no means of judging as to the solvency of the issuers, and by whom such losses are commonly irretrievable.

It may then not unfairly be contended, and may be conceded for the sake of argument, that the evil of which the Act was passed to prevent the recurrence,—

the danger to the convertibility of the note,—was such as to justify some kind and degree of exceptionally restrictive legislation. But, in order to decide whether the particular remedy described by the Act for that evil was or was not expedient, it will be necessary to consider (1) the efficacy of the remedy; (2) its cost; and (3) whether, looking to the nature and extent of the evil to be cured, its cure (supposing the remedy to have been effectual) was worth that cost.

With respect to the *first* point, the efficacy of the remedy; it is generally admitted that the Act of 1844 has effected that which we are assuming to be its object,—the removal of all possibility of danger at certain critical periods to the holders of paper currency on account of the relation between the notes of banks and their cash in hand. It is desirable, however, to bear in mind that (as has been already observed) the Act is composed of two principal ingredients, monopoly and restriction; and that monopoly, considered as a means of providing a trustworthy currency, is, in itself, an expedient of at least doubtful efficacy. The most natural effect of it is precisely the reverse —to induce reckless trading on the part of the banks so privileged, and to remove from them that inducement which free competition supplies to dealers in bank-notes, as in any other commodity, to improve to the utmost the quality of the article in which they deal.

The *second* question for consideration is the cost of the remedy which the Act provides; and this, fully understood, we shall find to be enormous. Banks of

issue are banks which, besides lending the metallic money at their disposal, lend also their credit in the form of notes payable on demand; and these notes are just so much (less the sum retained to meet demands for their conversion into coin) added to the general fund available for the purpose of profitable investment, whether in the way of production or exchange. Moreover, the addition thus made to the means of increasing the national wealth is an addition which possesses a peculiar value. All the operations of commerce and productive industry are effected through the instrumentality either of credit or of metallic money. As applicable to this purpose, credit compared with metallic money has this advantage, that its cost is inappreciable; metallic money compared with credit (under any of its forms except that of bank-notes) has the advantage of being not to a limited extent only but completely effectual. Bank-notes combine both these advantages. They can be supplied at no appreciable expense, and on the other hand, their circulation is not, like that of other forms of credit, confined to a limited class of persons and transactions, but (if allowed to be issued for sums sufficiently small) they are as available for every operation of production and exchange as metallic money itself. In so far then as legislation prevents the issue of bank-notes, it prevents the use of a singularly efficacious instrument of commercial and industrial progress.* And that the Act of 1844 must have done

* The prohibition of notes below 5*l.*—that is, of notes such as are almost exclusively available for purposes of production (since

this to a very serious extent the nature of its provisions leaves no doubt. Accordingly, we find that the Bank of England, with property in capital and deposits nearly double that of the Bank of France, has a paper circulation less by one third; that, notwithstanding her immense commercial inferiority, and though she possesses but one bank of issue, the total note circulation of France is very nearly equal in amount to that of this country; and that, notwithstanding the enormous increase of its trade and metallic currency, the note circulation of this country is at the present moment not materially greater than it was in 1843.

But this is far from being the whole, or even the most important part, of the price which the nation pays for the Act of 1844. Of all the causes which conduce to commercial prosperity, none can be imagined more important than a freely and fully developed banking system. The immense services rendered by banks in facilitating and cheapening mercantile transactions, and especially in providing profitable employment for money which would otherwise lie idle, or would be wasted in unproductive consumption, seems to be even now very imperfectly understood. As it is, the great increase of banking business which has taken place in this country since the year 1826 (when the successful efforts of the Legislature to make banks few and inse-

notes for a higher amount can rarely be used in payment of wages) —was not the work of the Act of 1844, but of a previous law passed on account of and immediately after the bank failures of 1825.

cure by limiting the number of their partners to six were at length discontinued) has contributed, there can be no doubt, in a very material degree to its extraordinary advance in wealth and prosperity. But that the Act of 1844 has seriously impeded the full and healthy development of banking business in this country is certain. By the monopoly of issue which it established it removed the inducement to the formation of banks and to the accumulation of deposits in them which is afforded by this important source of profit; while, by closely limiting and encumbering with vexatious conditions the issues of the privileged banks, it in the same manner checked the flow of deposits into them. Prevented from issuing notes, or closely limited in their issues, banks are debarred from a natural and legitimate source of profit, and are either unable to pay any interest at all, or any but a low interest, to depositors, or are obliged to resort for the purpose to investments more or less hazardous; and banking is thus not only discouraged, but made, where it is in operation, less secure. The cost of the Act, in this effect of it, can scarcely be over-estimated. It is hardly possible to place a limit to the advantage which might result from a measure which should remove the obstructions now existing to the free and prosperous action of safely conducted banking establishments, considered especially as a means of attracting and turning to immediate profit the vast amount of money which now, held in small sums by a multitude of persons, is dissipated unproductively or recklessly invested, in the absence of any readily

and constantly accessible channel for its profitable employment.

Such being the amount of evil (whether with or without any compensating advantage in the particular purpose which it fulfils is not here the question) inflicted upon the mercantile interests of the country by the Act of 1844 when trade is pursuing its ordinary course, we have now to enquire what is its effect upon them in times of commercial difficulty and distress. The immediate occasion of what is termed a "commercial crisis" is a sudden and general contraction of credit; and there are two causes by which, taken either separately or together, this effect is chiefly produced. The first is that which is commonly called "over-trading," or, in other words, excessive commercial or industrial speculation; and in this case the course of events is generally as follows. The unusual extension of credit produces a rapid rise of prices, or in other words a fall in the exchange value of the precious metals. The precious metals therefore begin to leave the country in search of a better market, and thus the loan fund is diminished; while on the other hand, the perceptible approach of the collapse of speculation causes an unusual demand for money on the part of speculators for the purpose of postponing the evil day. Thus the rate of discount advances under the double action of reduced supply and increased demand. Credit is still further contracted by the panic which begins to affect lenders, and those speculators who are unable to obtain further advances are compelled to sell their goods at the best

price they can obtain. Prices accordingly begin to fall; there is a general eagerness to sell in order to avoid still greater losses; and the result is a glut of the market and a still further fall of prices, which will continue for a longer or shorter time, and with more or less ruinous consequences, according to the height to which undue speculation has been carried, and the amount of temporary assistance which those traders whose solvency is endangered are able to obtain. Now what, in such a condition of affairs, is the effect of the Act of 1844? Observation of actual facts has proved* beyond doubt that it is not until a comparatively late stage of the process, and after prices have greatly risen, that there is on such occasions any considerable increase of bank-notes, and that the rise of prices is caused, primarily and mainly, not by bank-notes, but by the extension of mercantile credit. As long indeed as notes which were applicable to the payment of wages were in circulation, it is probable that, when the prevailing speculation had advanced far enough to reach the producers† (in its first stage it is usually confined to dealers) bank-notes had some effect in increasing prices; but since notes of a value below 5*l.* have been prohibited, banks of issue have been deprived of even this amount of influence in the case. Undoubtedly, when speculation has reached its full height, and the first symptoms of the unsound condi-

* The fullest evidence on this point is to be found in Tooke's "History of Prices." See also "Principles of Political Economy," by J. S. Mill, vol. ii. p. 191.

† *See* "Principles of Political Economy," by J. S. Mill, vol. ii. p. 195.

tion of affairs begin to show themselves, there will be an unusual demand for and a large additional issue of notes for the purpose of enabling speculators to avoid a ruinous sale of the goods which they hold; and in this manner the inevitable catastrophe is postponed for a time, only that it may be more fatal when it actually occurs. In so far, therefore, as at this particular juncture the Act of 1844 restricts the issue of notes, it must be considered as having a tendency to mitigate the evils of the time. But when once the tide has turned and the disaster has begun, its operation is mischievous in the extreme. There is no longer any fear of ministering to undue speculation, or of aggravating the calamity by keeping speculations afloat. It is not the use, but the disuse, of credit that is now in excess. The fall of prices, and the ruin consequent on it, increased by increasing panic, go far beyond the point of natural and necessary reaction; and not only hopelessly insolvent concerns, but those of whose ultimate solvency there can be no question, are carried away by the torrent. At such a time the cautious advances of banks are of the utmost value in protecting those whose business is substantially sound, and in mitigating the effects of a panic as unreasonable as the over-confidence from which it is the rebound; and the Act, by preventing all possibility of such timely assistance, seriously adds to the confusion, dismay, and ruin which prevail.

The second of the two causes to which a commercial crisis is mainly attributable is a large and sudden reduction of the general loan fund either by the with-

drawal of money for loans to foreign governments, or for the purpose of home or foreign investment, or on account of an unusually large "balance of trade" against this country. Of this character, wholly or chiefly, were the monetary difficulties of 1815, 1839, and 1847. As applicable to such occasions, it is certainly not surprising that the expediency of the Act of 1844 should have been called in question. The ordinary business of production and trade is for the most part carried on by means of advances of money to be repaid when the profits of the several transactions for which the money is borrowed has been realized. The effect then of a sudden and violent contraction of the loan fund is not only to prevent *pro tanto* the renewal of those advances, and to bring to that extent commercial and industrial operations to a stand-still, to the serious loss of those engaged in them, but also that many producers and dealers who require, and would, in the ordinary state of affairs, have obtained an extension of credit, are suddenly called upon to repay the advances made to them. Notwithstanding therefore that their business may be in a perfectly sound condition, and that, with the time ordinarily allowed to them, they would have been able to close profitably the operations in which they are engaged and to fulfil all their obligations, they are compelled to suspend payment. Other traders who have had dealings with them participate in the disaster; and a panic ensues which may lead to any amount of difficulty and distress. Now in this case the issue of notes, in so far as it enables dealers and

producers to continue their business, is an unqualified advantage; it is a proper and natural mode of alleviating the disorder. There is here no question of encouraging rash speculation, or of injuriously retarding a collapse; neither rash speculation nor collapse being among the circumstances of the case. So far then as the Act prevents at such periods any issue of notes which would otherwise take place (it must be remembered that we are, for the present, leaving out of consideration its value considered as an effectual remedy for a particular evil), it is simply and seriously mischievous. That the mere accident of an export of gold or of an unusual demand for it on account of productive enterprise at home, which in itself so far from diminishing adds to the real wealth of the nation, should have power to bring about so much calamity, is an evil greatly to be deplored, and which could only be completely cured by such an increase of mutual confidence, based upon an increase of honesty and prudence, as to admit of the more liberal use of credit under all its forms in substitution for coin. But a law which prevents this remedial employment of credit, in its most effective shape, to the extent or anything like the extent to which but for that law it would even now be possible, ought to have some immense countervailing advantage to recommend it.

Such, reasoning from the nature of the case, we find to be the cost of the Act of 1844 in periods of monetary derangement considered as arising either from excessive speculation, or from a mere contraction of the loan fund in the ordinary condition of mercantile

affairs. But it is not upon reasoning alone that we have in this case to depend. Since the passing of the Act three instances of "commercial crisis" have occurred—the first of which, that of 1847, is attributable to the former, and the second, that of 1857, to the latter of the two causes; while the third was of mixed origin, in which both causes had part. The first and second of these events were not only far more serious in degree than the third, but were among the very worst calamities of this nature that have ever occurred; and in both of them it became necessary, on the urgent demand of the whole mercantile community, and for the purpose of averting that which it was no great exaggeration to call "universal bankruptcy," to suspend the Act of 1844. The inexpediency of the Act, as applicable to monetary disorders of an aggravated type, is thus demonstrated with a force which no *à priori* argument however conclusive could be expected to bear. The third occurrence of the kind referred to is the pressure and embarrassment from which the money market has recently suffered, and from which it has even yet but imperfectly recovered.* It has been the result of a combination of causes, among which the demand upon the loan fund consequent on the multiplication of Joint Stock Associations, and the failure of speculations in cotton, were the most active, but which, taken together, have not been sufficient to cause a "crisis" nearly so calamitous as those which preceded it. The fact therefore that the Act has in this instance been allowed to remain in force in no way

* This paper was first published in May, 1865.

neutralizes the inference which we have drawn from its suspension on former occasions. It is evident that so strong a measure as the temporary repeal of the law was not likely to be adopted by the Government unless the evil had reached a stage far beyond that which it recently attained. Still less is there any ground for appealing to the comparative mildness of the late monetary disturbance as a proof of the expediency of the Act. For, in the first place, if the Act had really had any such salutary effect in restraining and regulating mercantile and monetary transactions as that which is thus attributed to it, that effect (as has been before observed) is not one of a kind which it is the business of legislation to produce; and in the next we have shown that in cases of commercial distress, occasioned (as they usually are) by one or both of the two causes to which the recent pressure is mainly attributable, the Act (apart from the service which it renders in protecting the convertibility of the note) is not only not beneficial but directly and seriously the reverse.

It is evident, then, that whatever may be the value of the Act considered as a remedy for a particular evil, it is a remedy of which the cost is extravagantly and ruinously high. In an ordinary state of commercial affairs the severe restrictions which it imposes upon the issue of bank-notes inflicts direct injury upon the nation by paralysing a singularly effective agent of exchange and production, and less direct but still more serious injury by stunting the natural growth of institutions of vital importance to the general welfare; while in the exceptional periods of commercial diffi-

culty, it acts as an aggravation of the prevalent distress, such as (to say the least) is far from being counterbalanced by any beneficial effect which it may have as a restraint upon speculation. We have now to consider, *thirdly*, what was the real nature and extent of the evil which this costly expedient was devised to meet. The evil was an alleged danger to the convertibility of the note:—what was the actual amount of that danger? It shrinks, looked fairly in the face, into much smaller proportions than is commonly supposed. In the usual condition of the money market no such danger had ever been apprehended: it was only at certain abnormal periods of mercantile embarrassment that there was any question of its existence. To what, then, at such periods, did it really amount? And first, with respect to the Bank of England. The earliest commercial "crisis," of which there is any record, occurred in the year 1783, and was the result of "over-trading." In that year the coin and bullion in the bank of England sank so low as to cause some anxiety: but the anxiety proved to be groundless; for the Bank, by judicious management of its issues, rode out the gale in perfect safety. The next occurrence of the same kind was in 1793, when, so far from there being any danger to convertibility, the extreme caution of the banks in averting any such danger was the subject of urgent remonstrance on the part of the trading classes; and the Government was actually induced, by an issue of exchequer bills, to supply the "accommodation" which the banks did not think it safe to afford. In 1797 another "crisis"

occurred; and the coin and bullion in the Bank having fallen to about 1,000,000*l.* while its circulation was about 8,000,000*l.* the Government interfered by suspending cash payments. But for this measure (mischievous as it was in principle, and as it proved to be in practice) there could have been no real necessity. The issues, though high in proportion to the coin and bullion, were already in course of rapid contraction; and the state of the foreign exchanges indicated a reflux of gold either actual or close at hand. From this time until 1817, when cash payments were substantially resumed, the notes of the Bank of England were inconvertible. In 1818, a "crisis" took place, in which the metallic reserve of the Bank fell to 8,000,000*l.* against a circulation of 28,000,000*l.*; and it was thought necessary again to suspend cash payments. Here, again, it may well be questioned whether the measure was really necessary: but supposing it to have been so, the fact affords no evidence of the danger of unrestricted convertible issues. For the Bank, having every reason which past experience could give to believe that in case of any pressing emergency caused by over-issue the Government would put an end to cash payments, was freed from those ordinary motives to caution by which it would be guided in the event of a repeal of the present law. Cash payments were finally re-established in 1823; and the next serious derangement of the money market was in 1825. During this derangement (perhaps the most calamitous event of the kind which has taken place in this country) the amount of coin and bullion in the Bank

fell to 1,000,000*l.*; and it was obliged to recruit its supply of ready money by borrowing 300,000*l.* of Messrs. Rothschild. The next period of trial was in 1839, when the coin and bullion fell to 2,500,000*l.* against a circulation of about 17,000,000*l.*; and the Bank was compelled to borrow 2,000,000*l.* of the bankers of Paris. The small amount to which on these last occasions the gold and silver in the Bank were reduced, and its compulsory resort to loans, on both of them, have been appealed to as in themselves going far to justify the Act of 1844. It is difficult to understand upon what grounds. The metallic reserve of the Bank was, it is true, at a low ebb; but there was neither a run upon it by the holders of notes, nor any rational ground for apprehending such an event. One might have supposed it more logical to anticipate from the circumstances of the case similar circumstances in any future case of the same kind; and that an establishment which had borne uninjured so exceptionally severe a trial might be relied on to meet with the same immunity any equally or less critical emergency. Moreover, on the second occasion at least, it seems that the loan was made by the Bank rather from excessive caution than from real necessity, since the tide had already turned and the reflux of bullion was assured. The prevalent notion that a degree of discredit, more or less affecting the whole nation, attached to the application by the Bank of England to the Bankers of Paris for assistance, is so purely sentimental as not to require any serious notice; but it may be worth while to mention, for the consolation of those

who entertain it, that during the next "crisis" (that of 1847) a similar application was made by the Bank of France to the Bank of England.

With respect to the country banks, the case is different. There can be no question as to the wide-spread disaster, consternation, and misery which has been caused in times of monetary difficulty by the inability of country banks to redeem their issues. But it is to be observed, first, that no such disaster had ever occurred among the banks of Scotland (owing doubtless in great part to the fortunate neglect with which they had been treated by the Legislature), and therefore in the case of Scotland the evil was non-existent, and the remedy wholly uncalled for. Secondly, that as regards the rest of the United Kingdom, every serious calamity of the kind which has occurred among the country banks is of a date previous to the repeal, in 1826, of the legal prohibition against the existence of banking partnerships consisting of more than six persons. It is not surprising that under such a law, which gave in the business of banking a species of monopoly to private traders, and prevented its being conducted except on a small scale, the paper currency should have been in the last degree unsound. Since its repeal there had been, at the passing of the Act of 1844, no serious disaster on account of country bank-notes. It is true that but one instance of commercial difficulty (that of 1839) had occurred during that period, and that accordingly the extent to which the change in the law had increased the security of the note had been as yet but imperfectly tested by experience. But (sup-

posing that the Act of 1844 had not been passed) there is good reason to believe that there would have been no repetition of the ruin which has from time to time resulted from the over-issue of country banks, and that, so far as regards those establishments, the evil which the Act was intended to cure, had already, in great part, been removed. With respect, then, to the country banks, as well as to the Bank of England, it seems clear that the danger contemplated in the Act has been enormously exaggerated, and that the severity of its provisions is out of all proportion to that danger.

We have seen, then, that (1) while the Act has been fully effectual for the accomplishment of its only defensible object—the protection of convertibility, (2) the cost to the country of the double remedy—monopoly and restriction—which it prescribed has been immense; and we have seen (3), that the evil which the Act was designed to cure,—the danger at certain periods to the convertibility of the note,—is reduced, when closely considered, to dimensions which are quite insignificant as compared with that cost.

From these considerations it seems to follow that the Act of 1844 was a measure inexpedient in the highest degree, and that its repeal, so far from being injurious, would be of the utmost benefit to the commercial interests of the country. The gain to the community resulting from its abolition would be infinitely greater than the loss.

The same considerations lead to the conclusion that there are other important respects in which our our-

rency laws require revision. The monopoly of issue within sixty-five miles of London which is possessed, independently of the Bank Charter Act, by the Bank of England, cannot, if the views which have been expressed in this paper are correct, be defended on any reasonable ground. We have shown that privileges of this nature, granted to one or more banks to the prejudice of banks in general, are injurious as impeding that full development of its banking system which is of such vital consequence to the nation; while it is at least doubtful whether on the whole their tendency is not to increase rather than to diminish the dangers incidental to a paper circulation. The first step in the reform of our currency laws which is so urgently needed would be, with the repeal of the Bank Charter Act, the abolition of all exclusive privileges, exceptional disabilities, and differential enactments, whether in respect to the issue of notes, or the obligation of the public to accept them, or in any other respect whatever, compensation being given for any interference with vested rights which such a measure might involve. The trade of the country would thus be relieved from an incubus of confused and mischievous regulation, and banking business would be placed, like all other branches of commerce, upon the footing which is essentially necessary to its prosperity—that of free and healthy competition.

This done, there would remain the question whether any and what restrictions or conditions ought to be imposed upon banks for the purpose of insuring the convertibility of their issues. In considering the effect

of the Act of 1844 as the particular measure which was adopted for this purpose, we have assumed, for the sake of argument, that some such restrictions or conditions were desirable. It must be admitted, however, that the assumption is a strong one. The special and only plausible ground upon which so direct and singular an interference with the principle of commercial freedom is supposed to be necessary, and especially of the distinction which is in this respect drawn between bank-notes and other forms of credit, is that bank-notes, and they alone, perform all the functions of money, or, in other words, that they are in the fullest and ordinary sense of the term, "currency," and that a currency liable to disaster is an evil of greater extent and importance than a system of mercantile credit with the same liability. The conclusiveness of this argument is, however, far from unquestionable. In the first place, we have found that the evil in question—the liability of bank-notes to disaster—showed itself between the years 1826 and 1844, when the banking-system of the country was comparatively free, in much smaller proportions than is usually imagined; and there is reason to believe, looking especially to the example of Scotland, that it would have been still smaller in amount if the freedom had been more complete. But even if the danger to be provided against were more formidable in degree than it really is, it may well be doubted whether the case would be such as to admit of departure with impunity from one of the most comprehensive and infallible laws of political economy;—whether the

currency is any exception to the rule which holds for all other commodities—that more harm is done by legal impediments to speculation in them than by the liability of such speculation to failure,—that the best mode of insuring to the public a supply satisfactory both in quality and quantity is perfect liberty of action on the part of dealers, and perfect liberty of choice on the part of customers; and that legislative regulations in any way interfering with that liberty are not only injurious as restricting trade, but calculated to defeat the very object with which they are framed;—and whether the only legitimate mode of counteracting the consequences of the inability of bankers, as of other traders, to perform their contracts is not to be sought in an improved law of insolvency. Nor should it be forgotten, that in that which appears to be the only instance of perfectly free banking with a paper currency in the strictest sense convertible,—that of the Scotch banks before 1844,—no important failure attended with losses to note-holders was ever known to occur.

Looking, however, to the extreme importance to the public of a currency in which it may entirely confide; to the fact, that in none of the three great commercial countries—England, France, and the United States—has it been considered safe to permit the perfectly unfettered circulation of bank-notes;—taking also into consideration the habitual condition of the public mind upon this subject;—it is not probable that for the present any English statesman will have courage to propose the exemption of banks of issue from all

legislative provision of whatever kind for the security of their issues. It becomes necessary, therefore, to inquire what should be the nature of the conditions imposed. There are three expedients which have been suggested, and which appear practicable for the accomplishment of the object in view. These are (1) The limitation of the aggregate amount for which notes may be issued beyond the coin or bullion actually in hand; (2) The prohibition of notes below a certain value; and (3) To require the possession of Government or other trustworthy securities as a guarantee for the redemption of the notes. Of these expedients (of which the monetary legislation of this country presents a strange compound) the two first are far more objectionable in their nature than the third, inasmuch as they involve a much more direct and decided departure from principle. It is evident, that to limit the amount to which notes may be issued beyond that of the precious metals in hand is a more direct and positive interference with freedom of trade than to allow of unlimited issues with the sole proviso that they shall be based upon satisfactory securities. An equally direct interference with it is involved in the prohibition of notes below a certain value, the proper object of which is not to prevent the failure of banks from over-issue, but to mitigate the effects of their failure when it occurs, especially as affecting the labouring classes. And though it is true that, by this effect of it, the most serious of the evils attendant upon such catastrophes is obviated, this advantage is balanced by the fact that in preventing the appli-

cation of bank-notes to the payment of wages, it deprives them in great part of their efficacy as instruments of production, and diminishes to that extent the demand for labour and the remuneration which it is able to obtain.

It is, then, in the third of the available expedients —the prohibition to issue notes except upon the guarantee of securities actually the property of the issuers and such as to command unfailing confidence—that the least objectionable mode of providing by legislation for the convertibility of paper money is to be found. It is obvious, that if full provision is made to insure the constant possession by the issuers of an equivalent value in securities, there can be no depreciation of notes and no loss to note-holders. In England, by the provisions of the Bank Charter Act, and in France (where the arrangement chiefly relied on for maintaining the security of issues is the complete monopoly of issue given to the National Bank) by the law which requires the investment of 4,000,000*l.*, or about half the capital of the Bank in the public funds, the principle of such a restriction has already been admitted. After the disastrous failures of American Banks in 1839, a law was passed by the Legislature of New York (which has recently been imitated by the Federal Government, and applied throughout the Union), under which notes could be issued only on the deposit by the issuers of securities to the full amount of their issue. Accordingly, the failures which have occurred among the banks of New York since the adoption of this measure, and which during the

"crisis" of 1839 were very numerous, have involved no run for gold on the part of the note-holders, and the notes of the insolvent banks have in all cases been redeemed. There are, however, two objections to the mode in which the principle has been applied in the United States. One of these is, that one half of the amount of the securities deposited may consist of obligations other than those of the Government, such as the Bonds of Railways and other Companies, and that the liability of such securities to depreciation has caused some loss to holders of the notes of bankrupt issuers. The other is that the duty of providing the banks with notes in exchange for the guarantees deposited, and of redeeming them when necessary, is imposed upon the Government itself. Both the power and the responsibility thus given to the Government would probably, and with reason, be disapproved in this country. But the plan involves no necessity for the discharge of these functions by the State. It has been proposed (in a pamphlet* recently published by M. Constantin Baer, remarkable for its simple and lucid treatment of a subject which is enveloped in much factitious obscurity), that the delivery to the banks of notes in return for securities should be the business of a central committee composed of delegates from the banks themselves; nor would there in all probability be any serious objection to such an arrangement. Whether even this machinery would be necessary, and whether it might not be sufficient

* "La Question des Banques en France et en Italie. Lettres à M. Michel Chevalier." Par M. Constantin Baer. Turin, 1864.

to require such assurance as frequent publication of accounts would afford as to the actual possession by the banks of the prescribed amount of securities, may be doubted. But the precautionary arrangements which might in this respect be necessary—the proportion, if any, in which the securities deposited might be allowed to consist of obligations other than those of the Government, and to what classes of such obligations the permission should extend,—and whether, as M. Baer proposes, it might not be desirable that the banks should at all times hold coin and bullion (on which notes might also be issued) bearing a certain proportion to the securities which they deposit in guarantee,—are questions of no very formidable difficulty, but which would require careful discussion when the precise mode in which the proposal might best be carried into effect in this country came to be considered.

Monopoly of whatever kind being thus removed, and restriction reduced to one simple and uniform requirement, the least embarrassing of any by which the object in view could be attained, the way would be cleared for the gradual assumption by the banking system of this country of an importance proportionate to the extent of its commerce and industry. No longer debarred from the profit incidental to the issue of notes, banking establishments would receive that innocuous kind of legislative encouragement which consists in the removal of artificial restraints; and being in a condition to afford interest to depositors without transgressing the bounds of prudent management, would

rapidly absorb a vast amount of surplus property which is now uselessly squandered or hazardously employed, and which would be added to the fund available for reproductive investment, or, in other words, for the creation of wealth. Nor would it be unreasonable to expect, that while such was the effect of the change upon the interests of the country in the normal condition of its trade and circulation, it would also tend to avert, or to mitigate when they occurred, those periodical convulsions of the money-market which have been the cause of so much evil. For, in the first place, it might fairly be anticipated that the amount of the reckless investment which is a frequent cause of such calamities would be diminished, in so far as that money which at such periods is now directly invested by its owners would then be left at the disposal of establishments well versed in business, and in a position to judge of the character of mercantile projects. And, in the next place, at that particular stage of a commercial "crisis" when the funds necessary to counteract the unnatural depression of credit are in disastrous deficiency, deposits which are now withdrawn from banks under the influence of the general panic would be on the contrary attracted to or prevented from leaving them by the greatly increased rate of interest which is characteristic of the time, and which would add to the profits of banks, and, therefore, to those of their depositors. It might even be hoped that when the expediency of the new system of guarantee had been tested, some gradual and tentative modification of it might be found possible, such as

might prepare the way for the admission of banks in this country to that complete liberty of action on which all other commercial business depends for complete success, and from which, on evidence which is so far from being entirely satisfactory, they have been excluded. In any case, a great reform would have been effected, and a great anomaly removed. It would no longer be said that England, which is the stronghold of free and independent commerce, is also that of restrictive and paternal monetary laws; or that the most important wheel in the machinery of her material progress is clogged by an unsightly mass of complicated, excessive, and random legislation.

THE FINANCES OF FRANCE AND ENGLAND.

A RECENT article in the *Revue des deux Mondes* draws an interesting comparison between the financial condition of France and that of England.

The English balance-sheet for 1863-4 shows, the writer says, a surplus of 3,152,000*l.*; while in that of France for the same period there is a probable deficit of 1,720,000*l.* The expenditure of England, which in 1860-61 was 72,500,000*l.* was reduced to 70,808,000*l.* in 1861-2; to 69,302,000*l.* in 1862-3; and to 67,186,000*l.* in 1863-4; while the estimate for the current year is less by 166,000*l.* than the last-named amount. Moreover, during these five years taxes have been removed or reduced to the extent of 9,415,000*l.* On the other hand, the expenditure of France was, in 1860, 83,360,000*l.*; in 1861, 86,840,000*l.*; in 1862, 90,000,000*l.*; in 1863, 92,000,000*l.*; her probable expenditure for 1864 is 94,200,000*l.*; and for 1865, 94,880,000*l.*; while in each of these years there has been a deficit, and on the whole period additional taxation to the extent of 2,960,000*l.* Again, the expenditure of England in 1852-3 was 50,291,000*l.*; it is now 67,000,000*l.*; showing (when allowance has been made

for a sum of 4,692,000*l.* on account of "expenses of collection," which appeared in the budget for the first time in 1857) an increase of 12,000,000*l.* On the other hand, the expenditure of France was, in 1862, 57,680,000*l.*; and in 1863, 92,000,000*l.*; showing an increase of 34,000,000*l.* With respect to the debts of the two countries—that of England was, in 1815, 861,000,000*l.* on which the annual charge was 31,646,000*l.* By the year 1853 it had been reduced to the extent of 92,000,000*l.*; but it was again increased by the Crimean War to 805,000,000*l.*; since which it has been diminished by 16,800,000*l.*; being now, in round numbers, 790,000,000*l.* The ordinary funded debt of France was, in 1814, 52,000,000*l.*; it is now more than 440,000,000*l.* and the charge upon it 13,600,000*l.* The total nominal capital of the French debt, funded and unfunded, M. Bonnet states at 560,000,000*l.* and the annual charge upon it (in which he includes the sinking fund and the charge for "*dotations*") at 27,934,948*l.*; while the total charge upon the English debt for the year 1863 was (he says) 28,115,667*l.*

These figures are, in some respects, less favourable to England than the writer supposes. The fact that Mr. Gladstone's actual surplus for 1863-4 was only 2,352,000*l.* instead of 3,152,000*l.* as M. Bonnet states, may, perhaps, be hardly worth mentioning. But it is important to notice that the expenditure of either country, as given by M. Bonnet, does not include "departmental and communal" expenses; and there can be no doubt that the expenditure of England under

this head (including, as it does, a single item of some 8,000,000*l.* for Poor Rates, which are unknown in France) is so much larger than that of France as to place the real outlay of the two countries much more nearly upon a level than appears. In the next place, though it is true that since the year 1860-61 there has been an annual reduction of our expenditure, it is also true that our expenditure is at the present moment greater by 4,000,000*l.* than it was in 1858, a year in which the Budget had very imperfectly recovered from the inflammatory attack brought on by the Crimean war. With respect to the French debt, M. Bonnet himself states that a great part of the increase which has taken place since 1814 was incurred immediately after that year for the purpose of "repairing the disasters" consequent on the revolutionary war. It would have been fairer, therefore, to date the comparison from a later year. M. Bonnet contrives to run up the charge upon the French debt to within a short distance of our own; but there is this important difference in favour of France, that no inconsiderable part of the annual charge upon her debt consists of a sinking fund, by means of which the debt itself is in course of gradual extinction. There remains the unpleasant but inevitable reflection that our own debt is still, in actual solid bulk, greater, even on M. Bonnet's showing, by nearly one-third than that of France.

There is, however, a subject of more importance than our financial position considered in relation to that of France; and that is, our financial position considered in itself. In a free country, where the hands that hold

the pursestrings are subject to the incessant, vigilant, and inevitable control of Parliament and the public; in an eminently commercial country, where wealth advances with a steadiness and swiftness elsewhere unknown, and the productiveness of fiscal imposts increases with corresponding rapidity; in a singularly practical country, where the shrewd conduct by individuals of their own business is reflected in the administration of public affairs,—it would be strange if the balance-sheet did not compare advantageously with that of any other nation. Viewed not relatively but absolutely, the picture is by no means so gratifying. In the year 1842-3 our expenditure was 51,167,236*l.*; and it remained for the following ten years at nearly the same figure, the amount for 1852-3 having been 50,782,476*l.* Our expenditure for 1864-5 is estimated in round numbers at 67,000,000*l.*, showing an increase upon that for 1852-3 ostensibly of about sixteen millions, but actually (when the account is rectified for the purposes of comparison) of about fourteen and a half millions. This is surely a condition of affairs which is very far from being a subject for self-gratulation. That at a time when (exception being made of those petty hostilities in remote parts of the world, which are of comparatively small financial importance, and which moreover are little to the purpose, since they may be said to have long ago assumed a chronic character) we are neither at war, nor to all appearance in the remotest danger of being so, having adopted a non-intervening and strictly defensive policy, our expenditure should be greater by some 28 per cent. than it was

twelve years ago, is a fact to be viewed, if with patience, certainly not with complacency. It is no answer to urge, though the statement is undoubtedly true, that the wealth of the country has increased by at least as large a percentage as its expenditure, and therefore that though there is additional expenditure there is no corresponding addition to taxation. The taxation of the country is heavier by 28 per cent., not than it was in 1852-3, but than it would have been at the present time but for the increase in the national outlay. And that it should be thus heavier is anything but satisfactory. A nation which has made regular annual progress in commercial prosperity, and may fairly calculate upon its continuance in future years, has a right to anticipate, in the absence of disturbing causes, not that the burden of taxation will remain stationary, but that it will become progressively lighter. Every increase in the national wealth implies a proportionate increase in the productiveness of existing taxes, or, in other words, an increase of revenue. But as, by the supposition, nothing has occurred to occasion an increase in the cost of government, the increase of revenue is not required, and a reduction of taxes ensues. Stationary commerce with increasing expenditure means increased taxation; progressive commerce with stationary expenditure means diminished taxation. And if, while its wealth increases, the percentage of its contributions to the treasury remains the same, a nation is deprived of one of the legitimate advantages of commercial improvement, and has certainly no reason to look with unmixed complacency on the state of its affairs. Still less has it

reason to do so when no exceptional cause is at work sufficient to account for the abnormal scale of expenditure which is the source of the evil. If such a cause exists, the evil, however much it may be regretted, should be cheerfully endured; if not, it is one which calls not only for regret, but for remedy. The idea that a nation, like an individual, should increase its expenditure as its wealth increases, and that therefore any addition to the national expenditure affords no ground for dissatisfaction provided that there is a proportionate addition to the national wealth, is based upon a false analogy. The parallel case is rather that of an individual who, because his income had improved, should authorise his agent to manage his affairs in a more expensive manner, though nothing whatever had occurred to necessitate their more expensive management. Undoubtedly, as a nation advances in wealth and population, the cost of an administration of its affairs proportionate to their extent and importance tends also to advance; but, speaking generally, it is only after a period of time much longer than that to which the present comparison applies that any marked difference in this respect can have taken place. In the present instance it is obvious that no such explanation can be given of apparently plethoric Budgets.

If we now inquire as to the particular direction which the public extravagance has taken, we find (as was to be expected) that it is that of naval and military armaments. The expenditure on the army and navy (including ordnance) in 1841-2 was 14,882,190*l.*; in 1852-3, 15,768,417*l.*; and the estimate for them in

the current financial year is 25,276,000*l.* (exclusive of the cost of "fortifications"), showing an increase of nearly ten millions. Thus of the fourteen and a half millions which we have found to be the total increase of expenditure in the present year, as compared with the year 1852-3, no less than ten millions are consumed by the army and navy alone.

The simple truth is (and it seems to be gradually gaining recognition) that, owing to various causes by which the public has of late years been more or less consciously influenced, we have adopted a scale of expenditure only to be justified by the necessity of preparation for imminent war. If, for instance, we had consented, in conjunction with France and for the sake of Poland, to try another fall with the colossal power of Russia, and if, by some chance, the Russian answer to the "*ultimatum*" had been delayed or doubtful for a year, our present outlay would have been no unreasonable one during that year. As it is, we submit to the charge, without having incurred the necessity. We protest loudly against intervention, but not against its cost. We decline to indulge in the luxury, but not to pay for it. We refuse to fire a shot for suffering humanity, but not to incur the expense which was the chief reason for our refusal; and the only incident of a "meddling" policy which we bear with equanimity is that which we look upon as its principal disadvantage.

If an opponent of reduced estimates be asked what are the grounds of his opposition, there are only two upon which he will insist with any tenacity:—"recon-

struction of the navy," and "our powerful neighbour." With respect to the first, he will forget that he has to account for an extraordinary expenditure, on the army and navy alone, of some ten millions; that at a cost of one million annually four iron-vessels of the most powerful and expensive kind can be annually constructed; and that we have now been "reconstructing" for several successive years. With regard to the second, there are persons who begin to doubt whether —"our powerful neighbour" having neglected one or two signal opportunities, not likely ever to return, of inflicting upon us the mischief which he is supposed secretly to intend, and it being his interest as well as apparently his earnest desire to keep the peace with this country—this ground for "bloated armaments" is any longer tenable. But, even supposing that it actually exists, the firmest believer in designs of invasion masked under the garb of friendship must admit that there is no such immediate or pressing danger as to require an extraordinary outlay of anything like the present amount. And he should be reminded that, when at length the traitor is unmasked, the quarrel picked, the sword drawn, and the vital force of each combatant about to be tested to the uttermost, it will not be without notice and time for preparation given to this country; and that she will be all the better fitted to engage in that or any other such desperate struggle for having husbanded her resources, and lived with some regard to a reasonable economy. In this point of view, not only those who are anxious for a pacific policy, but those who are urgent with the

Government to be "prepared for war," should advocate a judicious but vigorous retrenchment.

There is yet another aspect of recent "financial statements" which is calculated to excite emotions other than those of unmingled gratification, and upon which we are to be condoled with not only absolutely, but in relation to most other civilized countries. We are not only spending a very large amount beyond that which we ought to be spending, but we are raising seven or eight millions annually by means of an income-tax. Now there is undoubtedly much to be said on either side of the abstract question as to the comparative advantages of direct and indirect taxation. But there are two practical objections to the income-tax as a permanent impost, the first of which is singularly cogent, the second still more so, and which taken together would appear to be conclusive. The first is the extreme discontent and impatience with which the tax is borne, owing chiefly to the inequality of its operation—an inequality of which the removal has been repeatedly pronounced by competent authorities to be impossible;—the second is, that to treat it as a permanent tax is to lose or greatly impair it as a reserve. That a sound system of finance implies the existence of some highly productive and readily accessible fiscal instrument to which a nation may resort in times of great and costly national emergency, and that in the fulfilment of these conditions the tax upon income is immeasurably superior to any other, will scarcely be disputed. Thus, by using the income-tax when there is no pressing necessity for it and when it

is oppressive, we diminish our power of using it when it is urgently required and cheerfully borne; by employing it in time of peace we are blunting the edge of our most efficient weapon in time of war. There can be no doubt that the maintenance of this impost is the dark stain upon the bright result of the policy which Sir Robert Peel "inaugurated," as it is termed, in 1842. Sir Robert Peel's object—the removal or reduction of certain taxes which hung like a millstone round the neck of industry—was of such extreme and exceptional importance as to justify a temporary use of the national reserve. All that he predicted, and more, was accomplished by its means; but one essential feature of his programme, the abolition of the income-tax after it had served its turn, remained unrealized. The disease was cured some fifteen years ago; but the patient is still swallowing annually the nauseous draught which effected the cure. There is no doubt force in the argument that where there is extravagant expenditure it is well that the "governing classes" should be those upon whom the pressure in the first instance falls. But to use this argument is not to deny that the income-tax is an evil of which it is desirable to get rid, but to maintain that it should be got rid of only upon a reduction of the excessive expenditure.

There appears to be some ground for hope that an attempt will shortly be made to remove or mitigate these serious defects of a fiscal condition in many respects extremely enviable; and, when that is done, but not till then, we shall be able to read with a less quali-

fied sympathy the panegyrics of French writers upon our own financial prosperity.

The foregoing observations (which were first published in January, 1865) are applicable to the financial situation of this country at the beginning of the fiscal year which is about to expire. The estimates of the Chancellor of the Exchequer for that year (1865-6) showed a considerable surplus, so that he was enabled to reduce taxation; that is, to raise the same or nearly the same revenue as in the preceding year at a diminished cost to the tax-payer. It now appears that his actual surplus for 1865-6 will be larger than his estimate of it; so that in his estimate for the Budget for the ensuing year (1866-7) he will be able to repeat the process of the past year, *i. e.* to raise the same or nearly the same revenue while at the same time he reduces taxation.

It is very desirable to bear in mind to what this process, which affords very general satisfaction and is apt to be thought a complete answer to all complainants, really amounts. It amounts simply to this; that on account of the increase of the national wealth, the national expenditure is provided for at a lower rate of taxation per head than before. This is no more than might fairly be expected in a country which expects an annually increasing return to its commercial enterprise and industry. It affords no answer whatever to those whose complaint is of enormous and undue expenditure. That complaint is,

not that taxation is heavier by nearly twenty-eight per cent. than it was some twelve years ago, but that it is heavier by nearly twenty-eight per cent. than it would have been but for the increase during those years in the cost of Government: that in a time of profound peace there should be placed upon each individual tax-payer an additional burden, which is represented by an aggregate increase of some fourteen millions, beyond that which he would have borne if the expenditure had remained what it was in 1852. This would be an evil, if every member of the community were prosperous and affluent; it is a greater evil, and should be protested against by every one who has a voice to protest, when a large portion of the population is under the dominion of poverty and its faithful satellites—ignorance and vice.

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